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MANUAL

OF

MILITARY LAW.

[5th ed.]

(WAR OFFICE.)

1907.

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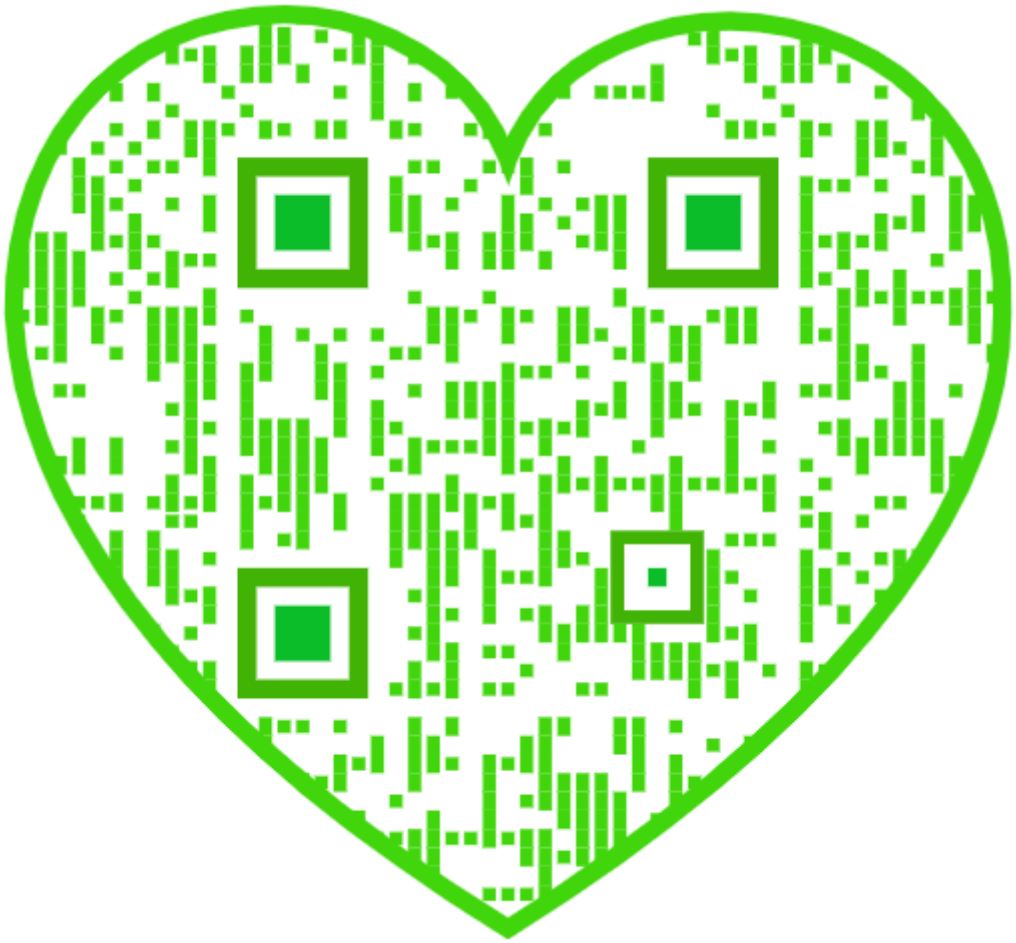

NOTE.

The corrections necessitated by the Territorial and Reserve Forces Act, 1907, have been made in the Army Act, and a copy of the first-mentioned Act will be found at the end of the Manual, but the Index contains no reference to the Territorial and Reserve Forces Act.

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MANUAL OF MILITARY LAW.

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PREFACE TO THE FIRST EDITION.

In July, 1879, Colonel the Rt. Hon. F. Stanley, M.P. (*a*), then Secretary of State for War, requested the Parliamentary Counsel Office to undertake the work of preparing Rules of Procedure, under section 69 of the Army Discipline and Regulation Act, 1879, and also of superintending the preparation of a Manual, which should contain an edition of the Act and of the above Rules with notes, and form a text book on Military Law. The work was commenced at once by the Parliamentary Counsel Office.

The Rt. Hon. Hugh C. E. Childers, M.P. on becoming Secretary of State for War in 1880, approved of the continuance of the work; and the present book, which is the result, was provisionally circulated by his authority, and is now issued by the authority of his successor, the Rt. Hon. the Marquis of Hartington, M.P. (*b*).

Before the Rules of Procedure could be finally settled, the Army Discipline and Regulation Act, 1879, was repealed and replaced by the Army Act, 1881, and a complete revision of Section VI (Discipline) of the Queen's Regulations, 1885, also took place.

These changes explain the delay which unavoidably occurred in the completion of the work commenced in 1879.

The book contains chapters giving a general view of the Army Act, 1881, of the Rules of Procedure, and of the history of military law and organisation. Chapters have also been added on collateral matters, as the Law of Riot, &c., and the Customs of War. These form Part I of the book.

The Army Act, 1881, and the Rules of Procedure with explanatory notes follow; and these, with some additional forms, &c., complete Part II of the book. Part III contains miscellaneous enactments, regulations, and forms, including the Regimental Debts Act, and the regulations made under it; and a set of forms illustrative of the chapter on the Customs of War.

The chapters were written by Sir Henry Thring, K.C.B., Parliamentary Counsel (*c*); Mr. H. Jenkyns, C.B., Second Parliamentary Counsel (*d*); Mr. C. P. Ilbert, legal member

(*a*) Now the Earl of Derby.
(*b*) Now the Duke of Devonshire.
(*c*) Subsequently Lord Thring, K.C.B.
(*d*) Subsequently Sir H. Jenkyns, K.C.B., and Parliamentary Counsel.

of the Council of the Viceroy of India (*a*); Lt.-Col. Blake, R.M.L.I.; Mr. A. C. Meysey-Thompson, of the Inner Temple; and the Editor. The Notes to the Army Act and to the Rules were for the most part written by Mr. H. Jenkyns and the Editor; the valuable notes of the decisions of the Judge Advocate-General have been supplied from the office of the Judge Advocate-General, and the illustrations of the forms of charges have been framed by Col. Rocke, Deputy Judge Advocate. The Index was framed by Mr. W. L. Selfe, of Lincoln's Inn (*b*).

The general editorship of the work was entrusted to Mr. G. A. R. FitzGerald, of the Parliamentary Bar, who has during its preparation been in constant communication with the office of the Parliamentary Counsel. Brigadier-General Elles, C.B., late Assistant-Adjutant-General (*c*), has rendered invaluable aid during its whole progress. The Editor is also much indebted to the criticisms and careful corrections of Mr. W. L. Selfe.

Acknowledgment also is due to Major-General R. Carey, C.B., late Deputy Judge Advocate, for the free use of his "*Military Law and Discipline*," a work on the Mutiny Act and Articles of War, which was undertaken and completed shortly before the old form of the Military Code became obsolete. On this account the work, although printed by authority at the War Office, was never published.

The debt which the army owes to the late Captain T. F. Simmons for his book on the Constitution and Practice of Courts-Martial, and to his son (sometime Major of Brigade, North-Eastern District, and now a Canon of York), the editor of subsequent editions, is well known. The book was the only complete modern treatise on the practice of courts-martial, which is almost as important as the military law itself.

Some of the editions were undertaken at the request of the military authorities, and in 1868 the editor was informed by the Adjutant-General that His Royal Highness the Field-Marshal Commanding-in-Chief recognised the efforts he had made in collecting the precedents, rules and axioms which guided the a ministration of military law (*d*).

The value of the labours of the author and editor has been still further illustrated by the new Rules of Procedure, which in many instances embody the course of procedure suggested in "Simmons on Courts-Martial."

(*a*) Now Sir C. P. Ilbert, K.C.S.I., and Clerk of the House of Commons, late Parliamentary Counsel.

(*b*) Now His Honour Judge Selfe.

(*c*) Subsequently Major-General Sir W. K. Elles, K.C.B.

(*d*) In the Queen's Regulations of 1868 the book was recommended as a useful book of reference, and in the General Order of 1st November, 1873, prescribing the examination of regimental officers previous to promotion, it was mentioned as useful for officers preparing for examination.

When the Army Discipline and Regulation Act of 1879 passed, the Rev. Canon Simmons, learning that the Secretary of State contemplated the issue of a Manual of Military Law under authority, generously placed his book at the disposal of the Secretary of State for the good of the Service. The readers of the present Manual will see that extensive use has been made of the offer, and that much of "Simmons on Courts-Martial" survives in the following pages.

The book has been submitted to and carefully revised by the Rt. Hon. G. O. Morgan, Q.C., M.P., Judge Advocate-General (*a*).

His Royal Highness the Field-Marshal Commanding-in-Chief has also been pleased to approve of the work.

An abbreviated edition of the work, in the form of a practical manual, will be issued as soon as possible.

May, 1884.

ADVERTISEMENT TO THE SECOND EDITION.

This edition has been revised throughout by the Editor with the advice and assistance of Mr. Jenkyns and Colonel W. R. Lascelles, A.A.G.

November, 1887.

ADVERTISEMENT TO THE THIRD EDITION.

New Rules of Procedure were issued in 1893, chiefly in consequence of the amendments made in the Army Act, which fused together the Field General Court-Martial and the Summary Court-Martial; and these Rules, as well as the various amendments of the Army Act, are embodied in the present edition, which has again been revised by the Editor, with the advice and assistance of Colonel Hildyard, late Assistant Adjutant-General, and now Commandant of the Staff College. The Index has been completely re-cast in a form which, it is hoped, will increase its usefulness to Officers and others; and the Editor wishes particularly to acknowledge the ability and industry brought to this portion of the work by Mr. James Huggett, of the War Office.

July, 1894.

(*a*) Subsequently Sir G. O. Morgan, Bart.

ADVERTISEMENT TO THE FOURTH EDITION.

The former Editor, Mr. G. A. R. FitzGerald, has been reluctantly obliged to relinquish the editorship, and Mr. F. F. Liddell (*a*) has been appointed to succeed him.

The chief changes in this edition are due to the application of the Criminal Evidence Act, 1898, to courts-martial. Rules for that purpose were published early in 1899. These have since been incorporated in a new edition of the rules, which also makes a few other slight changes in court-martial procedure.

In revising the book the Editor has had the benefit of the assistance of Major W. D. Jones, of the Wiltshire Regiment, and is especially indebted to him in respect of the revision of Chapters X and XI and the Appendices to the Rules.

Chapter VI has been revised by Sir C. P. Ilbert, who has been aided in the revision by Mr. W. Guy Granet, Barrister-at-Law.

Chapter VII has been rewritten by the Editor with the assistance of Sir John Scott, K.C.M.G., Deputy Judge Advocate-General.

Chapter IX has been revised by Sir Henry Jenkyns, who is indebted for valuable suggestions to Mr. Oman, Fellow of All Souls College, and Mr. Hassall, Student of Christ Church, Oxford.

In Part III the Volunteer Acts have been added. A table of the contents of the chapters has been added, and the index recast in a shorter form.

August, 1899.

ADVERTISEMENT TO THE FIFTH EDITION.

This edition has been edited by Mr. W. M. Graham-Harrison in succession to the late Editor, Mr. F. F. Liddell, who resigned on being appointed Second Parliamentary Counsel.

The various amendments made in the Army Act since 1899 (especially the introduction of the punishment of detention), and the re-organisation of the system of commands and of the War Office, have necessitated a new issue of the Rules of Procedure (which is embodied in this edition), and a considerable number of alterations in other parts of the Manual.

(*a*) Now Second Parliamentary Counsel.

The index is entirely new, and has been prepared in the War Office, under the supervision of the Editor.

The Editor is indebted to Mr. H. W. C. Davis, Fellow of Balliol College, Oxford, for several corrections in Chapters II and IX.

The Territorial and Reserve Forces Act, 1907, did not become law till after all the book was in type, and in consequence it has been found impossible, without unduly delaying the issue of this edition, to insert in Chapter XI or elsewhere an account of all the alterations effected by that enactment.

November, 1907.

NOTE.—In a work covering so much ground there must inevitably be errors; any corrections or suggestions will be gratefully received; they should be addressed to—

"The Editor
(Manual of Military Law),
Care of the Secretary of the War Office,
War Office, S.W."

CONTENTS.

PART I.

CHAPTER		PAGE
I.	INTRODUCTORY Written by Lord Thring.	1
II.	HISTORY OF MILITARY LAW Written by Lord Thring.	6
III.	CRIMES AND SCALE OF PUNISHMENTS Written by Mr. G. A. R. FitzGerald.	15
IV.	ARREST: INVESTIGATION BY COMMANDING OFFICER: SUMMARY POWER OF COMMANDING OFFICER: PROVOST-MARSHAL Written by Mr. G. A. R. FitzGerald, assisted by Sir H. Jenkyns.	25
V.	COURTS-MARTIAL Written by Mr. G. A. R. FitzGerald, assisted by Sir H Jenkyns.	35
VI.	EVIDENCE Written by Sir C. P. Ilbert.	55
VII.	OFFENCES PUNISHABLE BY ORDINARY LAW Originally written by Mr. A. C. Meysey-Thompson, Q.C. Re-written by Mr. F. F. Liddell.	85
VIII.	POWERS OF COURTS OF LAW IN RELATION TO COURTS-MARTIAL AND OFFICERS Written by Lt.-Col. Blake, R.M.L.I., and Mr. G. A. R. FitzGerald.	119
IX.	HISTORY OF THE MILITARY FORCES OF THE CROWN.. Written by Sir H. Jenkyns.	146
X.	ENLISTMENT Written by Sir H. Jenkyns.	184
XI.	CONSTITUTION OF THE MILITARY FORCES OF THE CROWN Written by Sir H. Jenkyns.	192
XII.	RELATION OF OFFICERS AND SOLDIERS TO CIVIL LIFE.. Written by Sir H. Jenkyns.	208
XIII.	SUMMARY OF THE LAW OF RIOT AND INSURRECTION.. Written by Lord Thring.	211
XIV.	THE LAWS AND CUSTOMS OF WAR ON LAND	222

PART II.

	PAGE
The Army (Annual) Act, 1906	257
The Army Act, with Notes	259
Rules of Procedure, with Notes	448
Appendix I. (Forms of Charges)	529
Further Illustrations of Charges	543
Appendix II. (Forms as to Courts-Martial)	558
Memoranda for the guidance of Courts-Martial	582
Appendix III. (Forms of Commitment)	585
Further Forms	591
Rules for Field Punishment	598
Form of Court-Martial Warrants	599
Form of Application for Court-Martial	604
Order in Council (Discipline on Board Ship)	605

PART III.

Miscellaneous Enactments, Regulations, and Forms.

Extract from the Petition of Right	613
Extracts from Railway Acts	614
Regulation of the Forces Act, 1871 (unrepealed sections)	617
Extract from National Defence Act, 1888	619
Reserve Forces Act, 1882	620
Reserve Forces Act, 1890	630
Reserve Forces and Militia Act, 1898	631
Reserve Forces Act, 1899	632
Reserve Forces Act, 1900	632
Reserve Forces Act, 1906	632
Militia Act, 1882	633
Extract from the Reserve Forces and Militia Act, 1898	652
Militia and Yeomanry Act, 1901	653
Militia and Yeomanry Act, 1902	653
Volunteer Act, 1863	654
Volunteer Act, 1869	666
Extract from the Regulation of the Forces Act, 1881	667
Volunteer Act, 1895	668
Volunteer Act, 1897	668
Volunteer Act, 1900	669
Regimental Debts Act, 1893	669
Regulations under Regimental Debts Act, 1893	677
Royal Warrant—Soldiers' Effects Fund	686
Territorial and Reserve Forces Act, 1907	688
Index	712

LIST OF ABBREVIATED REFERENCES.

Bac. Abr.	Bacon's Abridgment of the Law, 5th edition, 1798.
Barn. & Adol.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830–34.
Barn. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817–22.
Barn. & Cr.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822–30.
Best and Smith ..	Best and Smith's Reports.
Bro. P. C.	Brown's Cases in Parliament.
Broderip & Bingham ..	Broderip and Bingham's Reports.
Burr	Burrow's Reports, 5th edition, 5 vols., 1812.
Campbell	Campbell's Reports.
Car. & Marsh.	Carrington & Marshman's Reports.
C. & P.	Carrington & Payne's Reports, 9 vols., 1823–41.
Christian's Blackstone. .	Blackstone's Commentaries on the Laws of England, edited by Edward Christian, 4 vols., 1803.
Clode Mil. Forces ..	Clode's Military Forces of the Crown, 2 vols., 1869.
Cobbett, Parl. Hist. ..	Cobbett's Parliamentary History.
Coke Inst.	Coke's Institutes of the Laws of England, 4 vols., 1832 and 1817.
Comm. Journ.	Journal of the House of Commons.
Com. Dig.	Comyn's Digest of the Laws of England, 5th edition, 7 vols., 1822.
Cox Crim. Ca.	Cox's Criminal Cases.
Dowl. & R.	Dowling and Ryland's Reports.
East	East's Reports, 16 vols., 1801–14.
F. & F.	Foster and Finlason's Reports.
Grose, Mil. Antiquities	Military Antiquities and History of Ancient Armour, by Capt. F. Grose, 1801.
Hale, Hist. Com. Law..	Hale's History of the Common Law, 4th Edition.
Hallam, Const. Hist. ..	Constitutional History of England, by A. H. Hallam.
Hawkins	Hawkins' Pleas of the Crown, 2 vols. 6th edition, 1777.
Hough, Mil. Prec. ..	Precedents in Military Law, by W. Hough, Lieut.-Col. E.I.C.S., 1855.
Jur. (N.S.)	Jurist (new series).
K.R.	The King's Regulations and Orders for the Army (1904 edition).
L.J. (N.S.)	Law Journal (new series).
L.R., Ch. Div.	Law Reports, Chancery Division.

L.R., C.C.R.	Law Reports, Crown Cases Reserved.
L.R., Ex.	Law Reports, Exchequer.
L.R., H.L.	Law Reports, English and Irish Appeals (House of Lords).
L.R., P.C.	Law Reports, Privy Council Appeals.
L.R., Q.B.	Law Reports, Queen's Bench.
L.R., Q.B.D.	Law Reports, Queen's Bench Division.
L.R. [18] A.C. ..	Law Reports, Appeal Cases since 1890.
L.R. [18] Ch. ..	Law Reports, Chancery Division, since 1890.
L.R. [19] K.B. ..	Law Reports, King's Bench Division, since 1901.
L.R. [18] Q.B. ..	Law Reports, Queen's Bench Division, 1890 to 1901.
Lewin, C.C.	Lewin's Crown Cases.
Lords' Journ.	Journals of the House of Lords.
Lord Raymond.. ..	Lord Raymond's Reports, 2 vols. 4th edition, 1792.
Man. & Gr.	Manning and Granger's Reports.
M. & S...	Maule and Selwyn's Reports, 6 vols. 1814–29.
M. & W.	Meeson and Welsby's Reports, 16 vols. 1837–49.
Mod. Rep.	Modern Reports, 12 vols. 5th edition, 1793.
Moo. C.C.	Moody's Crown Cases Reserved.
Shower's Rep.	Shower's Reports, 2 vols. 2nd edition, 1794.
Smith, Lead. Ca. ..	Smith's Leading Cases, 11th edition.
Steph. Comm.	Stephen's Commentaries on the Laws of England, 4 vols. 14th edition, 1903.
Steph. Dig. Crim. Law	Digest of the Criminal Law, by Sir James Fitzjames Stephen, K.C.S.I. 6th edition, 1904.
Steph. Dig. Ev. ..	Digest of the Law of Evidence, by Sir James Fitzjames Stephen, K.C.S.I. 6th edition, 1904.
Stubbs, Constit. Hist...	Constitutional History of England, by William Stubbs, M.A. Regius Professor of Modern History, Oxford.
Taunt.	Taunton's Reports (Common Pleas, 1807–19), 8 vols.
T.R.	Term Reports (Durnford and East), 4 vols. 1794–1809.
W.R.	Weekly Reporter (Irish).
Well. Desp.	Wellington Despatches, 1838.
Wilson's Rep.	Wilson's Reports.

REFERENCES TO KING'S REGULATIONS.

Page in M.M.L.	King's Regulations. Para. in		Page in M.M.L.	King's Regulations. Para. in	
	1904 Edition.	1907 Edition.		1904 Edition.	1907 Edition.
20	489	556	42	515	580
21	464	499	49	518	583
21	472—479	508—513	52	528	593
22	475	510	53	523, 524, 525	588, 589, 590
22	461c	497	53	582—585	602—606
24	518	583	54	586, 627	607, 645
25	433—441	465—473	54	520	585
25	434, 435	466, 467	54	579—625	600—644
25	433	465	54	627	645
25	437	469	184	1747	264
26	438	470	184	1747—1754	264—269
26	194	127	184	1744	262
26	436	468	185	1744	262
26	439	471	185	1747	264
27	441	473	185	1757—1759	270—272
27	441—444	473—476	185	1812	273
27	445	477	187	1760—1768	323—334
27	444	482	188	2125—2132	1900—1906
27	446	478	190	1790—1827	376—412
27	450	482	191	1820—1822	406—408
27	1577	1612	191	555	522
27	629	648	194	1	1761
28	431	463	195	3—36	{ 217—236 37—47
28	431, 432	463, 464			
29	452, 466	484, 501	195	425	456
29	452	484	196	1785, 1786	367, 368
29	464	499	199	1789A	375
29	451—458	483—491	200	1 (b) and (c)	1761
29	446	478	202	3(v)	217 (v)
30	454—456	487—489	205	3(v)	217 (v)
30	451	483	207	1851—1868	337—353
31	454	487	207	3(v)	217 (v)
32	460	493	208	414	442
32	464	499	209	731—739	1354—1358
32	756	302	210	421	A.O. 252 of '06
32	472—479	508—513	210	419—421	448
32	467	502	217	280	955
32	468	503	219	273—292	948—968
33	461A	495	219	281, 282	956, 957
33	544	675	219	292	968
33	471	507	220	282, 283	957, 958
33	452—466	484—501	272	495	560
33	426, 427	456—458	276	488	554
34	644—652	661—664	278	430	462
34	535, 536	599	279	548—578	514—546
35	411	438	281	562—564	529—531
36	456	489	281	496	561
36	511	576	284	539	668, 669
37	513 (ii)	578 (ii)	286	493	563
37	513	578	288	452	485
37	15	229	289	497—501	562—566
38	486	552	289	497, 498	562, 563
38	492	559	297	423	453
39	492	559	299	488A	555
39	454—459	487—492	299	439	556
40	481—485	548—551	302	194	127
40	502, 503	567, 568	304	520	585
40	486	552	307	431	463
40	504, 505	569, 570	308	431	463
41	514	579	308	431—450	463—482

Page in M.M.L.	King's Regulations. Para. in		Page in M.M.L.	King's Regulations. Para. in	
	1904 Edition.	1907 Edition.		1904 Edition.	1907 Edition.
308	433, 441	465, 473	431	425	456
308	452, 464	484, 499	432	470	506
308	425	456	432	756A	303
308	451—459	483—492	433	744, 745	282, 283
310	425	456	453	431, *et seq.*	463, *et seq.*
310	451—459	487—492	453	432	464
310	471	507	453	457	490
310	464	499	454	451—458	483—491
310	628—642	646—660	455	456	489
310	477—479	512, 513	455	455	488
310	461C	497	455	464	499
311	473	509	455	454	487
311	461A	495	455	457, 458	490, 491
311	454	487	457	460—471	493—507
311	461B	496	457	472—479	508—513
312	460—466	493—501	457	461	494
312	464	499	457	453, 471	485, 507
312	453	485, 507	457	460	493
313	454	487	460	498	563
313	483, 486	547, 552	460	498A	564
313	425	456	462	492	559
313	411	438	463	480—506	547—571
315	513	578	463	511, 513	576, 573
323	525	590	463	513 (i)	578 (i)
326	522—526	587—591	463	511	576
326	612	632	465	508	572
328	425	456	466	513	578
328	579—585	600—606	484	487	553
331	579—585	600—606	485	2150, 2190	1916, 1921
334	586	607	486	518	583
334	628—642	647—660	486	516	581
334	586—642	607—660	487	524, 525	589, 590
334	625	607—617	487	526	591
335	425	456	487	524, 525	589, 590
337	590, 591	610, 611	488	527, 529	592, 594
337	425	456	488	—531	—596
339	519	584	488	528	593
341	542	673	488	579, *et seq.*	600, *et seq.*
342	1842	273	488	524	589
342	447	479	488	582, 588	602, 608
342	572—578	541—546	488	583	603
343	535	599	488	589—591A	609—612
344	521	586	489	523	588
344	1742—1845	262, *et seq.*	491	526	591
345	1744	262	493	510	575
345	1842	273	497	514	579
346	1844	274	498	514	579
346	1842	273	503	506	571
347	2125—2134	1900—1908	511	527	592
351	532	597	512	530	595
351	1760—1787	323—369	512	2165	1925
352	1757—1759	270—272	513	524	589
352	1747—1759	264—272	513	525	590
356	1820—1822	406—408	522	537—547	666—678
357	1790—1805	376, 390	523	542	673
357	1828—1836	413—421	525	532	597
357	1742	261	525	425	456
377	2165	1925	525	426	457
384	627, *et seq.*	645, *et seq.*	525	427	458
385	586	607	525	452	484
388	469	504, 505	525	466	501
395	1805 (vii)	390 (vii)	532	496	561
397	550—553	517, 540	532	498	563
403	456	489	577	520	585
404	470	505			

PART I.

CONTENTS OF CHAPTERS.

Chapter I.—Introductory.

	PAGE
Object of work	1
Description of laws with which officers have to deal	1
Description of military law	1
Description of law of riot and insurrection	1
Description of laws and customs of war	2
Their scope and object	2
Reasons for adopting term "laws and customs of war"	2
Arrangement of contents of book	3
Army Act and Rules	3
Royal Marines	4
Explanation of expression "martial law"	5

Chapter II.—History of Military Law.

Definition of military law	6
Object of military law	6
Military law in early times consisted of Articles of War issued when war broke out	6
Government of troops in time of war by Articles of War	6
Account of early Articles of War	6
Severity of early Articles	7
Illegal attempts to enforce military law in time of peace	7
Court of Chivalry—the origin of military courts	8
Constitution of Court of Chivalry	8
Civil jurisdiction of Court of Chivalry	8
Criminal jurisdiction of Court of Chivalry	8
Administration of military law by Court of Chivalry	8
Extinction of office of High Constable	9
Administration of military law by virtue of Commissions	9
Councils of War	9
Courts-martial	9
Military code in time of peace rendered necessary by establishment of standing army	10
Occasion of passing of first Mutiny Act	10
Objects and scope of first Mutiny Act	11
Second Mutiny Act	11
Succession of Mutiny Acts till 1878	11
Periods in Mutiny Act worthy of observation	11
From 1689 to 1712	11
Lapse of Mutiny Act from 1698 to 1702 in time of peace	12
Renewal of Act in 1702	12
Power to make Articles of War binding on the army in time of peace when out of the kingdom, conferred by Mutiny Act of 1712	12
Power extended by Mutiny Act of 1715	12
Mutiny Act of 1718	13

PAGE
Extension of Mutiny Act in Colonies 13
Power to govern by Act and statutory Articles in kingdom and colonies in time of peace co-extensive with power to govern by prerogative Articles in foreign countries in time of war .. 13
Case of *Barwis* v. *Keppel* 13
Extension of Mutiny Act and statutory Articles to foreign countries in 1803 14
Prerogative Articles finally superseded 14
Army Discipline and Regulation Act, 1879 14
Army Act, 1881 14
Annual Acts 14

Chapter III.—Crimes and Scale of Punishments.

Classification of military offences 15
Principle of classification 15
Offences dealt with in this chapter 15
Definition of mutiny 15
Framing charge of mutiny 16
Definition of sedition 16
Offences of disobedience to a lawful command 16
Definition of graver offence of disobedience 16
Of less offence of disobedience 17
What is a lawful command? 17
Duty of obedience 17
Religious scruples 18
Desertion and absence without leave 18
Evidence of intention not to return 18
Distance by itself not a criterion 18
Evasion of important service 18
Desertion by man on furlough 19
Attempt to desert 19
Soldier surrendering himself 19
General provisions as to desertion 19
Fraudulent enlistment 19
Stealing and embezzlement, when tried by court-martial 20
Stealing from a comrade 20
Embezzlement 21
Drunkenness—of officer 21
of non-commissioned officer 21
Jurisdiction of courts-martial to try drunkenness of private soldier 21
Drunkenness of soldier on duty 21
Drunkenness of soldier after being warned for duty 22
Drunkenness of soldier not on duty 22
Drunkenness considered in relation to other crimes 22
Conduct to prejudice of military discipline 23
Offences committed "on active service" 23
Offences punishable by ordinary law 23
Scale of punishments 23
Punishment of detention 24
Field punishment 24
Articles of War 24

Chapter IV.—Arrest: Investigation by Commanding Officer: Summary Power of Commanding Officer: Provost-Marshal.

(*i.*) *Arrest.*

Military custody of person charged with offence 25
Arrest of officer 25
Arrest may be close or open 25
Arrest usually preceded by investigation 25

PAGE
Arrest of senior by junior officer in certain circumstances 26
Case of Lt.-Col. H. in 1819 26
Officer under arrest has no right to demand court-martial 26
Release of officer 26
No privilege of Parliament from arrest 26
Non-commissioned officers 26
Confinement of private soldiers 27
Breaking arrest 27
Improper release and suffering escape 27
Receiving accused persons into custody 27
Account of offence 28
Omission to deliver account 28
Duty of commander of guard to report name and offence of accused 28

(*ii.*) *Investigation by Commanding Officer.*

Investigation by commanding officer—
In case of officer 28
In case of soldier 29
Duty of officer conducting investigation 29
Examination of witnesses 29
Decision of commanding officer 29
Caution as to expressing opinion 30
Right of soldier to claim court-martial 30
Adjournment for taking down summary of evidence 30
Mode of taking summary 30
Remand of accused for trial by court-martial 31
Use of summary of evidence 31
Convening court 31

(*iii.*) *Summary Power of Commanding Officer.*

Power of commanding officer to deal with non-commissioned officer or soldier 31
Drunkenness 32
Absence without leave 32
Forfeiture of pay 32
Right of soldier to demand district court-martial 33
No trial after punishment by commanding officer 33
Delegation of power by commanding officer 33
Commanding officer of detachment 33

(*iv.*) *Provost-marshal* 33

(*v.*) *Discipline on board H.M.'s ships* 34

Chapter V.—Courts-Martial.

(*i.*) *Constitution and Jurisdiction.*

Three descriptions of court-martial 35
Powers of—
Regimental court-martial 35
District court-martial 35
General court-martial 35
Jurisdiction in respect of certain offenders 35
Further observations on jurisdiction 36
Composition of courts 36
Legal minimum 36
Composition of—
Regimental court-martial 36
District court-martial 36
General court-martial 37
Trial of members of auxiliary forces 37

PAGE
General provisions 37
President 37
Remarks on trial of offences by different courts 37
Convening officer—
Of regimental court 38
Of district court 38
Of general court 38
Warrants for convening in U. K. 38
In India and elsewhere out of U. K. 38
Contents of warrants 38
Powers under warrant for convening general courts-martial .. 39
Field general court-martial 39
Object of field general court 39
Constitution and powers 39

(ii.) Procedure.

Application for court-martial by commanding officer 39
Duty of convening officer in considering application for court-martial 39
Power to refer to superior authority 40
Considerations to be borne in mind by convening officer 40
Removal of offender for trial 40
Notice to accused of charges, &c. 40
Accused to have opportunity of preparing defence 41
Assembly of court 41
Hours of sitting 41
Proceedings before commencement of trial 41
Eligibility and freedom from disqualification of—
Members of court 41
President 41
Judge advocate 41
Adjournment if court not properly constituted, or accused not properly charged 42
Amenability of accused to jurisdiction 42
Prosecutor may be present 42
Conclusion of preliminary proceedings 42
Seat for accused, when allowed 42
Objections by accused to members of court 42
Procedure if objections allowed 43
Swearing of—
Members 43
Judge advocate and officers attending for instruction 43
Shorthand writer and interpreter 43
Court may be sworn to try several offenders 43
Arraignment of accused 43
Claim of accused persons to be tried separately 43
Objection by accused to charge before plea 44
Plea to jurisdiction of court 44
Plea in bar 44
Plea of "guilty" 44
Procedure on plea of "guilty" 44
Refusal to plead, &c. 45
Plea of "not guilty" 45
Duty of prosecutor 45
Examination of witnesses for prosecution 45
Defence of accused 45
Procedure if accused calls witnesses other than witnesses to character 45
Latitude allowed in defence 46
Court not to be influenced by supposed intention of convening officer 46
Friend of accused 46

PAGE
Counsel 46
Examination of witnesses 47
Evidence to be read over to witnesses 47
Recalling witnesses 47
Expenses of witnesses 47
Interpreter 47
Remarks on employment of interpreter 48
Court is open, but may be closed for deliberation 48
Absence of member 48
Member cannot abstain from voting 48
Finding—
Of "not guilty" 49
Of "guilty" 49
Procedure on conviction preliminary to consideration of sentence 49
Wording, date, and signature of sentence 49
Proceedings of court 49
General observations on duty of a court-martial in awarding sentence 49
Joint offenders 50
Further observations 50
Further observations; classification of offences 50
Repeated offences of individual 50
General prevalence of crime 50
Insubordinate language 51
Discipline, how best maintained 51
Recommendation to mercy 51

(*iii.*) *Proceedings subsequent to Finding and Sentence of Court-Martial.*

Confirmation of proceedings—
Of regimental court-martial 52
Of district court-martial 52
Of general court-martial 52
Warrant for general court-martial—
In the U. K. 52
In India and elsewhere abroad 52
Delegation as to district court-martial 52
Power of confirming authority to send back finding and sentence for revision 52
Mitigation, remission, and commutation of punishment 53
Approval of sentence of death in colony 53
Directions for execution of sentence 53
Execution of sentence of penal servitude 53
„ „ „ imprisonment 53
„ „ „ detention 54
Further provisions 54

Chapter VI.—Evidence.

Introductory.

Meaning of "Rules of Evidence" 55
English rules of evidence primarily applicable to trial by jury .. 55
Nature of evidence 55
Difference between judicial and non-judicial inquiries 55
Reasons for excluding certain classes of evidence in judicial inquiry 56
Evidence in courts-martial to be governed by English law .. 56
Matters with which rules of evidence are concerned 56

(*i.*) *What must be proved.*

Charge brought must be proved 57
Substance only of charge need be proved 57

PAGE

(ii.) What facts are assumed to be known.

Judicial notice 58
Matters of which judicial notice will be taken 58

(iii.) By which side proof must be given.

Burden of proof 58
Shifting of burden of proof 59
Presumption of intent from unlawful act 59

(iv.) What statements are admissible as Evidence.

Rules as to admissibility of evidence 59
Rule of relevancy 59
Rule of best evidence 59
Hearsay 59
Opinion 59
I. Rule of relevancy 59
Character not evidence for prosecution 59
Character admissible as evidence for defence 60
Effect of evidence as to character 60
Evidence of facts tending to show general disposition not admissible 60
Where several offences connected, evidence of one admissible as proof of another 60
Facts showing intention; knowledge, belief, &c. 61
Facts showing intention (further illustrations) 61
Evidence as to motive, preparation, subsequent conduct, or consequences admissible 62
Acts of conspirators 62
Statements not forming part of conspiracy inadmissible 62
Illustrations of evidence admissible on charge of conspiracy .. 62
Acts and declarations of accused when evidence for him in conspiracy cases 63
II. Rule as to best evidence 63
Rule chiefly applicable to documents.. 63
Primary and secondary evidence 63
Primary evidence of document 63
Attested and unattested documents 63
Distinction between private and public documents 63
Secondary evidence of private documents, when admissible .. 63
Secondary evidence of private documents, how given 64
Public documents, what deemed to be 64
Primary and secondary evidence of public documents 64
Certified copies 64
Provisions of Documentary Evidence Act as to certain documents 65
Special provisions of Army Act as to documents provable by copies 65
Rules as to best evidence not applicable to distinction between direct and indirect evidence 65
Nature and strength of circumstantial evidence 66
Illustrations of difference between good and bad circumstantial evidence 66
Best evidence does not mean strongest possible assurance .. 67
Number of witnesses requisite 67
III. Rule as to hearsay 68
Form of rule as to hearsay in narrower sense 68
Statements made in presence of accused not excluded 68
Dying declarations 68
Dying declarations, illustrations of rule 69
Statements forming part of *res gestæ* 69
Statements forming part of *res gestæ:* illustrations of rule .. 69
Special rule in case of trials for rape and kindred offences.. .. 70

PAGE
Statements as to bodily or mental feeling admissible 70
Declaration of deceased person against interest 70
Statements made in course of business by person since deceased .. 70
Admissibility of deposition 70
Summary of evidence, how far admissible 70
Application of hearsay rule to documentary evidence 71
Recitals of public facts, of statements, proclamations, &c. 71
Entry in public record made in performance of duty 71
Special provisions of Army Act 71
IV. Rule as to opinion 71
Exception in case of experts 72
Medical experts 72
Experts in military science 72
Experts in handwriting 72
Rule excluding opinion does not exclude evidence as to belief .. 72
Opinion as to conduct, how far admissible 72
Refreshing memory 73
Notes referred to not evidence of themselves 73

(*v.*) *Admissions and Confessions.*

Rule as to admissions 73
Confession admissible only against person who makes it 74
Confession must be voluntary 74
Confession when not deemed voluntary 74
Confession when deemed voluntary 74
Confession made after removal of impression produced by threat, &c. deemed voluntary 74
Facts discovered through involuntary confession admissible .. 75
Confession made under promise of secrecy, &c. 75
Whole of confession must be given 75
Confession made on oath or in previous proceedings 75

(*vi.*) *Who may give Evidence.*

General rule as to competency of witnesses 75
Competency of person charged 75
Rule as to persons jointly charged 76
Evidence of accomplices 76
Competency of wife 76
Incompetency from idiotcy, &c. 77
Deaf and dumb persons not incompetent.. 77
Religious belief immaterial as to competency 77
Competency of member of court to give evidence 77
Distinction between competency and credibility 77

(*vii.*) *Privilege of Witnesses.*

Person *competent* not always *compellable* to give evidence 77
Witness not to be compelled to criminate himself 78
Rules as to accused giving evidence 78
Privilege does not extend to answers showing civil liability .. 79
When privilege may be waived by witness 79
Evidence as to affairs of State 79
Privilege as to confidential reports and information 79
Privilege as to proceedings of court of inquiry 79
Information as to commission of offences 79
Communications during marriage 79
Professional communications 79
Doctors and clergymen not privileged 80
Questions to be entered on proceedings whether answered or not .. 80

PAGE

(viii.) How Evidence is to be given.

Mode of giving evidence dealt with by rules 80
Points requiring attention of court 80
Examination of witnesses 81
Leading questions 81
Test of what are leading questions 81
Examples of fair and unfair questions 81
Rule as to directing attention to particular persons and things.. 82
Exceptions in case of hostile witness 82
Rules as to cross-examination 82
Further observations on cross-examination 83
Exclusion of evidence to contradict answers as to questions testing veracity 83
Cross-examination as to previous statements 83
Impeaching credit of witnesses 84
Rule as to re-examination 84
Discretion of court as to enforcing rules 84

CHAPTER VII.—OFFENCES PUNISHABLE BY ORDINARY LAW.

Introductory.

Liability of soldier to civil as well as military law 85
Jurisdiction of military courts over civil offences 85
Principles on which jurisdiction should be exercised 85
Scheme of the chapter 86

(i.) Punishments.

Punishments 86
Other consequences of convictions 87

(ii.) Responsibility for Crime.

Criminal responsibility 87
Children 87
Insane persons 88
Temporary intoxication 88
Compulsion 88
Necessity 88
Ignorance of law 88
Ignorance of fact 89
Parties to offence 89
Innocent agent 89
Assisting in offence 89
Common intent 89
Instigating an offence 89
Knowledge of intended offence 90
Accessory before the fact 90
Accessory after the fact 90
Attempt to commit offence 90
Intention 90
Consent 91
Accident 91
Negligence 92

(iii.) Responsibility for use of Force.

Use of force 92
Amount of force to be used 92
Cases in which use of force is justifiable 92

PAGE

(iv.) Responsibility for Acts of Omission.

Acts of omission 94
Omission to perform duty 94

(v.) Assaults and Sexual Offences.

Assault 94
Aggravated assaults 95
Indecent assaults 95
Rape 95
Carnal knowledge of a child 95
Procuring girl to become a prostitute, &c. 96
Abduction 96
Procuring abortion 97
Sodomy 97
Acts of indecency 97
Disorderly houses 97
Dangerous act 97

(vi.) Offences against Children and Servants.

Illtreatment of children 97
Abandonment of children 97
Concealment of birth 97
Neglect of servants 98

(vii.) Homicide.

Homicide 98
Murder 98
Letters threatening to murder 99
Manslaughter 99
Test of sufficiency of provocation 99
Attempt to murder 99
Conspiracy to murder 100

(viii.) Theft and Cognate Offences.

Theft 100
Possession of lost property and possession by servants 101
Stealing lost property 101
Embezzlement 101
Conviction for theft on charge of embezzlement and *vice versâ* .. 102
Embezzlement by persons in public service 102
Obtaining goods by false pretences 102
Conviction of theft on charge of obtaining by false pretences 103
Robbery 103
Extortion 103
Breaking and entering. Burglary 103
Receiving stolen goods, &c. 104
Cheating, &c. 104

(ix.) Forgery; Perjury; Coinage Offences; Personation.

Forgery 105
Uttering forged documents 105
Possession of forged notes, &c. 106
Perjury 106
Coinage offences 106
Uttering 106
Clipping 107
Personation 107

PAGE

(*x.*) *Malicious Injury to Property.*

Malicious injury to property 107
Arson 107
Other examples of malicious injury 107

(*xi.*) *Miscellaneous Offences.*

Bigamy 108
Treason 108
Being at large whilst sentenced to penal servitude 108
Escape 108
Offences relating to the obstruction of justice 108

TABLE OF OFFENCES AND PUNISHMENTS 109

CHAPTER VIII.—POWERS OF COURTS OF LAW IN RELATION TO COURTS-MARTIAL AND OFFICERS.

Introductory.

Courts-martial and officers amenable for acts done without or in excess of jurisdiction 119
Exceptions in case of injuries affecting only military position .. 119
Meaning of acting without jurisdiction 119
Illustrations of acting without jurisdiction 119
Further illustrations 119
Result of acting without jurisdiction 120
Excess of jurisdiction 120
Modes of interposition of courts of law 120

(*i.*) *Writ of Prohibition.*

Definition of the writ of prohibition 120
When prohibition will issue 120
Grant v. *Gould*, 1792 121
Poe's case, 1832 121
M'Carthy's case, 1866 121
No example of issue of prohibition to a court-martial 122
To officer 122
Disobedience of prohibition 122

(*ii.*) *Writ of Certiorari.*

Definition of the writ of certiorari 122
When certiorari will issue 122
Mansergh's case, 1858 122
His trial by court-martial 122
Refusal of application for certiorari 123
Roberts's case, 1879 123
No distinction between his case and Mansergh's case 124

(*iii.*) *Writ of Habeas Corpus.*

Writ of *Habeas Corpus*, the remedy against illegal custody .. 124
When *habeas corpus* will issue 124
What is a sufficient return to writ 124
General disinclination of courts to interfere with matters of discipline 124
Blake's case, 1814 125
Rule nisi granted 125
Rule discharged 125
Sufficiency of return that prisoner is in custody under sentence of competent court 126

PAGE
Suddis' case, 1801 126
Jones v. *Danvers*, 1839 126
Instances of discharge obtained by writ 126
Douglas' case, 1842 126
Porrett's case, 1844 126
Allen's case, 1860 127
Observations of Chief Justice Cockburn 127
Military custody not now illegal by reason merely of informality, &c. 127
Application for attachment against officer failing to make return.. 127
Canadian case cited in Simmons on Courts-martial 127

(*iv.*) *Actions for Damages.*

Actions against members of courts-martial and individual officers 128
Illegal sentence by court-martial 128
Frye v. *Ogle*, 1743 128
Damages recovered by Lieut. Frye 128
Sequel of this case 129
Vindication by the Chief Justice of his authority 129
Observations of Lawrence, J. 129
Illegal imprisonment by president of court-martial 129
Illegal command by superior officer 129
Warden v. *Bailey*, 1810 130
Non-suit set aside, and new trial granted 130
Opinion of the Exchequer Chamber in *Dawkins* v. *Rokeby* .. 130
Illegal execution of sentence 130
Excessive corporal punishment 130
Trial by court-martial of civilian 131
Further instances of actions by civilians 131
Bona fides does not excuse an illegal act 132
Immaterial that cause of action arose abroad 132
Mostyn v. *Fabrigas*, 1774.. 132
Members of courts-martial not liable for mere errors of judgment 132
Abuse of military authority 132
Wall v. *Macnamara* 133
Where jurisdiction exists, action only lies if malice can be inferred 133
Swinton v. *Molloy* 134
Custom of the service may be a justification 134
Grant v. *Shard*.. 134
Civilians protected against abuse of military authority 134
Acts complained of as done maliciously and without probable cause 134
Sutton v. *Johnstone*, 1786 135
Questions raised in this case 135
Result of trials, and decision of Court of Exchequer 135
Reversal of decision of Court of Exchequer by Exchequer Chamber 136
Probably no action lies for an act within limits of military authority even where done maliciously and without probable cause .. 137
Actions for libel 137
Dawkins v. *Paulet* 138
Jekyll v. *Moore* 138
Report of court of inquiry privileged 138
Question to be determined in these cases that of privilege .. 138
Malice held to take away privilege—*Dickson* v. *Wilton, sed quære* 138
Dickson v. *Combermere* 139
Publication of sentence of court-martial not a libel 139
Complaint to proper authorities not a libel 139
R. v. *Bauley—Fairman* v. *Ives* 140
Harwood v. *Green* 140
Privilege of witnesses 140

PAGE
Actions for negligence 140
Weaver v. *Ward* 140
Case of *H.M.S. Volcano* 140
Action by foreigner 141
Non-liability for hostile acts done by authority of Government .. 141

(*v.*) *Liability to criminal proceedings.*

Liability to criminal proceedings 141
Case of *Governor Wall*, 1802 141
Circumstances of this case 141
Direction of the Chief Baron to the jury 142
Case of *Ensign Maxwell*, 1807 142
Ruling of the Lord Justice Clerk as to orders given 142
R. v. *Thomas* 142
How far specific commands can excuse subordinate 143
Criminal liability for offences committed out of the realm .. 143
Case of Sir Thomas Picton, 1806 143
Execution of sentences, &c. 143

(*vi.*) *Protection of persons acting under the Army Act and other Acts.*

Protection of persons acting under Statute 144
Application of chapter 145

CHAPTER IX.—HISTORY OF THE MILITARY FORCES OF THE CROWN.

Object of chapter 146
Two periods in history of forces 146

First Period.—General and Feudal Levies.

General liability to service in early times 146
Double aspect of this service 146
Organisation of general levy 147
Lieutenants in counties 147
Right of purveyance 147
Thegns 147
Feudal levy 148
Composition in lieu of personal service 148
In case of feudal levy 149
Scutage or Escuage 149
In case of general levy, quota and contributions to expenses .. 149
Mode of calling out feudal levy 149
Questions as to legality of commissions for purpose of foreign service 150
Resistance of Parliament 150
Impressment during Wars of the Roses and in the time of Tudors 150
Repeal of Armour Acts in reign of James I 151
Commissions of musters and trained bands 151
Commissions of musters, a grievance under Charles I 152
Impressment declared illegal by Long Parliament 152
Trained bands or militia under Charles I 152
Troops raised irregularly during Civil War 152
Other classes of soldiers 152
Crown grantees 152
Criminals and debtors 152
Mercenaries 153
Raising of mercenaries, by indentures or contracts 153
Enlistment to serve the Crown 153
Enforcement of obligation to serve 153
In case of mercenaries 154
Punishment of desertion after Revolution 154

PAGE

Second Period.—Standing Army.

Changes in military system on the Restoration in 1660 154
No standing army before Restoration 154
Maintenance of standing army after Restoration 155
Maintenance of standing army in time of peace, without consent of Parliament, declared illegal by Bill of Rights 155
Control of Parliament since the Bill of Rights 155
As respects number of troops 156

Raising, Government, and Payment of Army since 1660.

Raising, &c., of army since 1660 156
Compulsory service replaced by system of bounties 156
Competition for recruits between army and militia in 18th century 156
Contracts to raise troops subsequently to the Revolution in 1688 .. 157
System of recruiting by beating orders 157
Mode of defraying expenses of recruiting 157
Pecuniary interest of officers in system 157
Abolition of system, 1783 157
Term of service 158
Army Service Act, 1847 158
Army Enlistment Act, 1867 158
Army Enlistment Act, 1870, and Reserves 158
Government of army since 1660 158
Finance of the army 159
Grant of money by Parliament 159
Issue of pay 159
Clothing 159
Military stores 159
Barracks 159
Provisions and transport 159
Army extraordinaries 159
Secretary at War 159
Commander-in-Chief and Judge Advocate-General 160
Secretary of State for War 160
Army Council 161
Audit of military accounts 162

Militia.

Periods of history of militia 162
General and local militia 162
First period. Organisation of militia on Restoration in 1680 .. 162
Acts passed 1662–1745 163
Second period. Re-organisation of militia after rebellion of 1745 163
Consolidation of Militia Acts 164
Third period, 1815–1852 164
Fourth period. Re-organisation of the militia in 1852 165
Militia Act, 1875 165
Raising of the Militia. Act of 1662.. 165
Alteration in mode of raising men in 1757 165
Fine for not raising quota 166
Volunteers recognised by Act of 1758 166
Changes in system during nineteenth century 166
Numbers of the militia 167
Quotas under various Acts since 1757 167
Numbers under Act of 1871 167
Conditions of service 167
Annual training 167
Power to embody 167
Militia liable to serve only in United Kingdom 168

PAGE
Term of service 168
Command of militia. Act of 1661 169
Powers of Lord Lieutenants under Act of 1662 169
Powers of Crown 169
Changes in 1852 and subsequently 169
Powers of Lord Lieutenant re-vested in Crown by Act of 1871 .. 170
Status of militia officers 170
Provisions of Act of 1881 170
Militia not subject to Mutiny Act at all till 1757 170
Militia brought more under military law since 1852 171
Payment of expenses of militia 171
Act of 1757 171
Storage of arms, &c. a local charge till 1871 171
Billeting 172
Relief of families of militiamen 172
Enlistment of militiamen into the army 172
Act of 1795 172
Acts of 1852 and 1854 172
Act of 1875 172
Acts for raising forces to meet apprehended French invasion, 1796–1812 172
Acts establishing local militia 173
Account of local militia 173
Training, command, and embodiment 173
Not raised since 1815 223
Militia of Scotland before and under Act of 1802 174
Militia of Ireland. First Act, 1715 174
Amending Acts 174
Acts after Union 175

Yeomanry and Volunteers.

Early volunteer corps 175
Acts of 1794 and 1802 175
Act of 1804 175
Position of Yeomanry up to 1901 176
Present position of Yeomanry 176
Revival of volunteers in 1859 177

Billeting.

Billeting 177
Billeting in early times 177
Abuse of the practice, and declaration of illegality thereof by Petition of Right 177
Billeting under Charles II 177
Billeting under James II 177
Billeting first authorised by Parliament in Mutiny Act, 1689 .. 178
Billeting under Army Act 178
Billeting illegal except so far as expressly authorised 178
Billeting in private houses illegal 178
Billeting in Scotland 178
Billeting in Ireland 179
Necessity of billeting while barrack accommodation insufficient .. 179
Checks on abuse of practice 179
Routes authority for billeting 179
Billeting the militia 180

Impressment of Carriages.

Prerogative right of purveyance 180
Impressment under the Mutiny Act 180
Scotland and Ireland 181

PAGE
Orders authorising impressment 181
Impressment of carriages for the militia 181
Exemptions from tolls.. 182

Conveyance of Troops by Railway.

Conveyance of troops by railway 182
Power to take possession of railways in case of emergency .. 182

CHAPTER X.—ENLISTMENT.

Object of chapter 184
Term of original enlistment 184
Change of conditions of service 184
Re-engagement 184
Continuance in service after 21 years 184
Regulations of Secretary of State as to re-engagement, &c. .. 184
Regulations as to non-commissioned officers 185
Power in certain circumstances to detain soldier after expiration of his term 185
Forfeiture of service under former Acts 185
Provisions of Army Act as to forfeiture of service 185
Effect of provisions 186
Enlistment for general service and appointment to corps 186
Power to transfer under former Acts 186
Provisions of Army Act as to transfer 186
By consent 186
From regiment ordered abroad from home, or *vice versâ* 186
As a punishment 186
Conditions of enlistment not varied without consent of soldier .. 187
Application of Army Act to soldiers enlisted under former Acts.. 187
Further observations on application of Army Act 187
Attestation before civil authority required since 1694 187
Provisions of Army Act as to attestation 188
Evidence of attestation 188
Acceptance of pay renders a soldier subject to military law, though not attested 189
Enlistment of—
Apprentices 189
Minors 189
Aliens. Act of Settlement 189
Limited power to enlist aliens 189
Discharge. Power of Crown to discharge soldiers 190
Certificate of discharge 190
Conveyance home of soldiers on discharge 190
Disposal of lunatic soldiers 190
Transfer to reserve 191
Offences in relation to enlistment 191

CHAPTER XI.—CONSTITUTION OF THE MILITARY FORCES OF THE CROWN.

Introductory.

Military forces consist of Regular forces and Auxiliary forces .. 192
Observations on Indian forces 192
Observations on Colonial forces 192

British Forces.

British forces 193
Constitution of "Army" in common acceptation of term .. 193
Departmental corps 194

PAGE
Other departments connected with the Army 194
Unit of army for enlistment and service is the corps 194
Unit for other purposes not necessarily the same 195
Explanation of term "commanding officer" 195
Reserves—(1) Army Reserve; (2) Militia Reserve 195
Army Reserve divided into two classes 195
First class of Army Reserve 195
Section A of first class 195
Section B of first class 196
Entry into Section B 196
Illustrations of Sections A and B 196
Section D 196
Second class of Army Reserve 197
Entry by transfer or enlistment 197
Annual training of Army Reserve men 197
Calling out in aid of civil power 197
Liability to permanent service 197
Extent of liability 198
Re-entry on Army service 198
Militia Reserve 199
Annual training 199
Liability to permanent service 199
Other provisions as to Militia Reserve men 199
General orders and regulations for reserve forces and general result 199
Marines 199
Regiment of Royal Marines raised in 1755 199
Term of service, &c. 200
Transfer of Royal Marines to army 200
Expenses of Royal Marines 200

Auxiliary Forces.

Connection between auxiliary and regular forces 200
Association of militia in corps with regulars 200
General and local militia 201
Provisions of Militia Act, 1882. Lieutenants of counties and deputy-lieutenants 201
Government of militia 201
Number and voluntary enlistment of men 201
Officers and staff 202
Command 202
Permanent staff of militia 202
Training of recruits 202
Annual training and exercise 202
Embodiment 203
Liability to service 203
Disembodiment 203
Application of military law to militia 203
Enlistment into regular forces 203
Fraudulent enlistment by militiaman 204
Desertion and absence without leave 204
Discharge 204
Exemptions 204
Exceptional position of certain localities 204
Imperial Yeomanry 204
Points of difference between Yeomanry and Militia 204
Officers of yeomanry 205
Volunteers of Great Britain 205

PAGE
Numbers and corps of volunteers 206
Expense of volunteers 206
Liability of volunteers to service 206
Regulations of Secretary of State 206
Application of military law to volunteers 207
Officers of volunteers 207
Ireland 207
Permanent staff of volunteers 207
Trial by court-martial 207
Command 207

CHAPTER XII.—RELATION OF OFFICERS AND SOLDIERS TO CIVIL LIFE.

How far in England a soldier is divested of civil rights and liabilities 208
Illustrations. Inability to change domicile or settlement .. 208
Special provision as to maintenance of wife and family 208
Restrictions on creditors of soldier 208
Wills of officers and soldiers 209
Exemption of soldier servants from licence duty 209
Privileges of soldiers in relation to letters 209
Exemptions from local rates and tolls 209
Exemption from service on juries, &c. 209
Right to vote at Parliamentary election, and to sit in House of Commons 210
Military Savings Banks 210

CHAPTER XIII.—SUMMARY OF THE LAW OF RIOT AND INSURRECTION.

Object of chapter 211
Definition of unlawful assembly 211
Example of what is, and what is not, an unlawful assembly .. 211
Definition of "riot" 212
Examples of riot 212
Definition of "insurrection" 212
Examples of insurrection 212
Case of *R.* v. *Frost* 212
Distinction between unlawful assembly, riot, and insurrection .. 213
Distinction in punishment 213
Additional crimes usually incident to riots and insurrections .. 213
Suppression of unlawful assemblies, riots, and insurrections .. 214
Degree of force to be used in suppression of unlawful assemblies 214
Suppression of riots 214
Extract from charge of Chief Justice Tindal 214
Use of deadly weapons by those engaged in—
Dispersing riots 215
Apprehension of rioters 215
Suppression of insurrections 216
Account of Riot Act 216
Effect of proclamation under Act 216
Form of proclamation 216
Effect of remaining for an hour after proclamation 216
A riot may be dispersed before the proclamation in the Riot Act is read 217
Further observations 217
Circumstances which may guide authorities in use of force .. 217
Further illustrations 218
In case of insurrection 218
Summary of law as to unlawful assemblies, riots, and insurrections 218

PAGE

Summary of law as to force to be used—
In case of unlawful assembly 218
In case of riot 219
In case of insurrection 219
Application of preceding observations to troops aiding civil power 219
Division of responsibility between magistrates and military officer 219
Opinion of Sir Charles Napier 220
Note.—Extract from report of Committee on Featherstone Riot.

Chapter XIV.—The Laws and Customs of War on Land.

Note 222
Geneva Convention, 1864 223
Declaration of St. Peter-burg 226
Regulations annexed to the Hague Convention 228
Geneva Convention, 1906 244

[*The Alterations made in the Army Act and in the Rules of Procedure since* 1899, *as well as in the edition of the Manual issued in that year, are denoted by black lines in the margin.*]

CHAPTER I.

INTRODUCTORY.

Object of work.

1. The object of the present work is to assist officers in acquiring information in respect of those branches of law with which they have occasion to deal in the exercise of their military duties.

Description of laws with which officers have to deal.

2. Officers, as such, are concerned with the following laws :—

1. Military Law.
2. The Law Relating to Riot and Insurrection.
3. The Laws and Customs of War.

Description of military law.

3. Military law is the law which governs the soldier in peace and in war, at home and abroad. At all times and in all places, the conduct of officers and soldiers as such is regulated by military law. Military law is contained in the Army Act (*a*), supplemented by the Rules of Procedure made under its authority, and by the King's Regulations, and by Army Orders. The Army Act, which now fills the place of the Mutiny Act and Articles of War, is brought into operation annually by a separate statute. The Army Act is part of the Statute Law of England, and, with the considerable difference that it is administered by military courts and not by civil judges, is construed in the same manner and carried into effect under the same conditions as to evidence and otherwise, as the ordinary criminal law of England (*b*). It must be recollected throughout this work that the statute law referred to is the law as enacted by the Parliament of the United Kingdom, while the "common law" is the law which has not been "created or declared by express enactment, but developed by the Courts from principles founded in the 'custom of the realm,' or deemed so to be" (*c*).

Description of law of riot and insurrection.

4. There is not in England, as in many foreign countries, a special law defining the relations between the military and civil power in cases of riot and insurrection. Troops when called out to assist the civil power in these cases are under military law as soldiers, but they are also as citizens subject to the ordinary civil law of England to the same extent as if they were not soldiers. Their military character is superimposed on their civil character, and does not obliterate it (*d*). The rioters or insurgents are wholly under the ordinary civil law, and are in no respect subject to military law, or to the "customs of war." Troops employed against armed rioters are, it is true, rendered by the Army Act (*e*) subject to military law as if they were on active service, and the rioters were an enemy ; but this enactment relates only to the government of the troops. The rioters are an enemy only while

(*a*) 44 & 45 Vict., c. 58. This Act repealed and re-enacted with some amendment the Army Discipline and Regulation Act, 1879, which had consolidated in one statute the Mutiny Act and Articles of War. The amendments made by the annual Acts from 1882 down to 1907 are incorporated with it.
(*b*) See Army Act, ss. 127, 128, and Rule 73 (B).
(*c*) Sir F. Pollock, in Encycl. of English Law, vol. III., p. 141.
(*d*) See ch. XII, para. 1
(*e*) Army Act, ss. 176 5) and (7), and 190 (20).

Ch. I.

actually resisting, and when force ceases to be used, the rioters, whether prisoners or otherwise, must be tried or otherwise dealt with according to civil law. The law, then, of riot and insurrection is not necessarily part of the military education of an officer, except in so far as some knowledge of it is useful as a guide for his own conduct, when required by his military obligations to assist the civil power.

Description of laws and customs of war.

5. The laws and customs of war have effect only in the case of war. A commander of troops in time of war, and in occupation of a foreign country, or any part thereof, acts in two absolutely distinct capacities. First, he governs his troops by military law only; secondly, he stands temporarily in the position of governor of the country or part of the country which he occupies. In this latter capacity he imposes such laws on the inhabitants as he thinks expedient for securing, on the one hand, the safety of his army, and, on the other, the good government of the district which, by reason of his occupation, is for the time being deprived of its ordinary rulers.

Their scope and object.

6. The law thus administered by an occupying general to the inhabitants has been rightly defined as the will of the conqueror, in the sense that the legality or illegality of the laws he imposes cannot be determined by any human court, and that no appeal to a court of law lies from his judgment; on the other hand, certain rules, depending in part on the practice of civilised nations and in part on express written agreement between them, have been established, to which officers are bound to conform in the administration of the territory which they occupy, and those rules are called the laws and customs of war. These laws and customs of war also lay down certain regulations (which are binding between belligerents partly by virtue of international custom and partly in virtue of written agreements) as to the mode of conducting warfare and the necessary intercourse between combatant forces.

Reasons for adopting term "laws and customs of war."

7. The expression "laws and customs of war" has now been adopted instead of the expression "customs of war" which was formerly used in this manual, but gives a misleading impression of the character of the rules in question at the present day. It is no doubt true that a law, to the mind of an Englishman, conveys the idea of a defined and rigid rule, which must be obeyed in all circumstances and at all risks, and the infraction of which involves a crime punishable by a legally constituted tribunal. But although the "laws and customs of war" consist of rules the enforcement of which must vary considerably, according to circumstances, and must, in the case of a military occupation of territory, be subordinate to the safety of the occupying army, the greater bulk of the rules in question have, within the last forty years, been reduced into definite shape and expressed in written agreements, to which most civilised powers have become parties. Some, however of these rules are still only customs, preserved by military tradition and in the works of international jurists.

To indicate, therefore, the mixed character of these rules, as being in part definite rules based on international agreement and in part rules not precisely defined and resting only on international practice, the expression "laws and customs of war" is here used (*a*).

(*a*) These laws and customs of war are quite distinct from the "custom of war," referred to in the old Mutiny Act and Articles of War, in which the expression meant the custom of the service.

Arrangement of contents of book.

8. Such being the laws and customs which this book professes to explain, it may be well to state shortly how it deals with these several subject matters.

Chapters I, II.

9. This introductory chapter is followed by a chapter giving a short history of military law from the time of the Conquest down to the passing of the Army Act. It is hoped thus to show clearly the principles of English law applicable to the government of the army, and the steps by which the necessity for a statutory power to maintain discipline in the army in time of peace led gradually to the substitution in time of war of Articles of War, issued under the authority of the Mutiny Act, for Articles of War issued under the prerogative power of the Crown.

Chapters III, IV, V.

10. The third, fourth, and fifth chapters are occupied with an explanation of the disciplinary provisions of the Army Act, and of the procedure by which these provisions are enforced.

Chapters VI, VII.

11. Military courts follow the law as to the admission and rejection of evidence which is in force in civil courts in England. The sixth chapter, therefore, contains a summary of the law of evidence as administered in ordinary criminal trials in England. The seventh chapter gives a summary of the English criminal law so far as it is applicable to members of the army. This chapter is necessary, inasmuch as most ordinary civil crimes, when committed by persons subject to military law, are cognisable by military courts at all times, and all of them are so cognisable when committed on active service, or out of His Majesty's dominions, or in parts of His Majesty's dominions out of the United Kingdom, and at a distance from any competent criminal court.

Chapter VIII.

12. Military courts and individual officers are, in respect of acts which are illegal or in excess of their jurisdiction, subject to the control of the superior civil courts. The eighth chapter is framed with a view of indicating to officers the extent of jurisdiction which they are entitled to exercise, either as members of courts-martial or individually, and the circumstances and mode in which their acts may be called in question. It is intituled "Powers of Courts of Law in relation to Courts-martial and Officers."

Chapters IX, X, XI.

13. Parts II and III of the Army Act are concerned with "Regulation" in contradistinction to "Discipline," which forms the subject of Part I. These two parts—the one, Part II, relating to Enlistment, the other, Part III, relating to Billeting and Impressment of carriages—are dealt with in the ninth, tenth, and eleventh chapters; and occasion is taken to give there a sketch of the history and constitution of the Forces, with the view of assisting officers desirous of studying the subject.

Chapters XII, XIII, XIV.

14. Officers and soldiers have certain privileges in relation to the mode of making their wills, exemption from tolls and serving on juries, and otherwise. These are explained in the twelfth chapter. The scope and object of the thirteenth and fourteenth chapters, intituled "Summary of the Law of Riot and Insurrection" and "Laws and Customs of War," have been already stated at sufficient length. These fourteen chapters constitute Part I of the work.

Army Act and Rules.

15. Part II consists of the Army Act and Rules of Procedure made under it, which are printed with notes, and are followed by the rules for summary punishment, some forms, &c., relating to courts-martial, and the Order in Council relating to discipline on board ship. Part III comprises some miscellaneous enactments,

regulations, and forms relating to the Army, and the reserve and auxiliary forces.

Royal Marines.

16. As will be seen hereafter, the Royal Marines, who formerly, when not borne on the books of any of His Majesty's ships, were governed by a Mutiny Act passed for them annually, have now been made subject, when not on the books of a King's ship, to the Army Act (*a*).

Explanation of expression "martial law."

17. It will be observed that no mention has been made of "martial law" among the branches of law with which this book deals. The reason for this will now be shortly explained; but in view of the great confusion attaching to the use of the term "martial law," its proper meaning must as a necessary preliminary be precisely ascertained.

"Martial Law," then, in the proper sense of the term, means the suspension of ordinary law and the government of a country or parts of it by military tribunals and must be clearly distinguished, in the first place from "military law," the nature of which is explained above in paragraph (3), and with which it has sometimes been identified (*b*), and in the second place from that "martial law" which forms part of the laws and customs of war.

The law of most foreign countries recognises an intermediate state between war and peace, known by the name of the state of siege, under which the ordinary law is suspended for the time being by proclamation, and the country is subordinated in whole or in part to military authority by proclamation, but such a state of things cannot exist under English law, which never pre-supposes the possibility of civil war, and makes no express provision for such contingencies. In short, although in the arbitrary times of our history attempts were made to apply military law to the civil population, such attempts have long been recognised to be illegal. Martial law, in the proper sense of the term, can be established in the United Kingdom or in a self-governing British Possession only by an Act of Parliament or of the local legislature (*c*).

It has, however, been well pointed out (*d*) that "the assertion that no such thing as martial law exists under our system of Government, though perfectly true, will mislead anyone who does not attend carefully to the distinction between two utterly different senses in which the term martial law is used" by modern English writers. In time of invasion or rebellion, or in expectation thereof, exceptional powers are often assumed by the Crown, acting usually (though by no means necessarily) through its military forces, for the suppression of hostilities or the maintenance of good order within its territories (whether the United Kingdom or British possessions); and the expression "martial law" is sometimes employed as a name for this common law right of the Crown and its servants to repel force by force in the case of invasion, insurrection, or riot, and to take such exceptional measures as may be necessary for the purpose of restoring peace and order (*e*).

(*a*) Ch. XI, paras. 32–36, and Army Act, s. 179.

(*b*) See Hale, Hist. Com. Law, p. 34, and speceh of Lord Alverstone, C. J., in House of Lords, 24th April, 1902.

(*c*) See the provisions made in Ireland by 39 George III. c. 11 (I) (1799); 43 Geo. III. c. 117 (1803); 3 & 4 William IV. c. 4 (1833). In a British possession under the direct *legislative* authority of the Crown a proclamation of martial law by the Crown would be as effective as a Statute in the United Kingdom.

(*d*) Dicey, Law of the Constitution, 6th ed., p. 284.

(*e*) A full account of the right to use force to suppress riot or insurrection will be found in ch. XIII, paras. 12 *seq.*

The intention to exercise such exceptional powers and to take such exceptional measures is generally announced by the issue of a "proclamation of martial law;" but on the one hand such a proclamation is not necessary, as the right to exercise these powers depends on the actual circumstances and not on the proclamation; and on the other hand, the proclamation of itself in no degree suspends the ordinary law, or substitutes any other kind of law in its stead, but operates only by way of warning that the Government is about to resort, in a given district, to such forcible measures as may be necessary to repel invasion, or suppress insurrection, as the case may be. To obviate any question as to the legality of the measures taken for this purpose (whether or not they have been preceded by a proclamation of martial law) it has been usual to pass an Imperial or local Act of Indemnity, for the protection of those engaged, so far as the steps taken by them have been reasonably necessary for the purpose, and carried out in good faith, and for the confirmation of the sentences passed by military courts (*a*).

For the purposes of the soldier, it is not necessary to discuss the several questions, of great interest to the lawyer, which have presented themselves for consideration in connection with the exercise of "martial law" during the recent war in South Africa: questions such as whether the fact of the ordinary courts of law being open is conclusive that there is no necessity for having recourse to military tribunals, and how far things done under a proclamation of martial law can ultimately be examined in the civil courts (*b*). It is only necessary to add that, when a proclamation of martial law has been issued, any soldier who takes, in accordance with the official instructions laid down for the guidance of those administering martial law, such measures as he honestly thinks to be necessary for carrying to a successful issue the operation of restoring peace and preserving authority, may rely on any question as to the legality of his conduct being subsequently met by an Act of Indemnity.

(*a*) The above paragraph incorporates the substance of Article 18 ("Martial Law in the Home Territory") of the Handbook of the Laws and Customs of War, by Professor T. E. Holland, K.C., issued in 1904.

As to Acts of Indemnity, see (*e.g.*) the cases mentioned in Clode, Mil. Forces, ii. pp. 163–173 and 511; the Cape Colony Indemnity Acts of 1900 and 1902; and the Natal Indemnity Acts of 1900 and 1901.

(*b*) See a discussion of these questions by Mr. G. G. Phillimore in Encycl. of English Law, vol. xiii., under title "Martial Law," and Note xii. in the Appendix to Dicey, Law of the Constitution; and generally on "martial law" ch. viii. of the same work.

CHAPTER II.

HISTORY OF MILITARY LAW.

Definition of military law.

1. Military law, as distinguished from Civil law, is the law relating to and administered by military courts, and concerns itself with the trial and punishment of offences committed by officers, soldiers, and other persons (*e.g.* sutlers and camp followers) who are from circumstances subjected, for the time being, to the same law as soldiers. This definition is to a great extent arbitrary, the term "military law" being frequently used in a wider sense, to include not only the disciplinary, but also the administrative law of the army, as, for instance, the law of enlistment and billeting. In this chapter, however, the term is used only in the restrictive sense above mentioned.

Object of military law.

2. The object of military law is to maintain discipline among the troops and other persons forming part of or following an army. To effect this object, acts and omissions which are mere breaches of contract in civil life—*e.g.*, desertion or disobedience to orders—must, if committed by soldiers, even in time of peace, be made offences, with penalties attached to them ; while, on active service, any act or omission which impairs the efficiency of a man in his character of a soldier must be punished with severity.

Military law in early times consisted of Articles of War issued when war broke out.

3. In the early periods of our history military law existed only in time of actual war. When war broke out troops were raised as occasion required, and ordinances for their government, or, as they were afterwards called, Articles of War, were issued by the Crown, with the advice of the Constable, or of the Peers, and other experienced persons ; or were enacted by the Commander-in-Chief in pursuance of an authority for that purpose given in his commission from the Crown (*a*). These Ordinances or Articles, however, remained in force only during the service of the troops for whose government they were issued, and ceased to operate on the conclusion of peace. Military law, in time of peace, did not come into existence till the passing of the first Mutiny Act in 1689.

Government of troops in time of war by Articles of War.

4. The system of governing troops on active service by Articles of War issued under the prerogative power of the Crown, whether issued by the King himself or by the Commander-in-Chief or other officers holding commissions from the Crown, continued from the time of the Conquest till long after the passing of annual Mutiny Acts (*b*), and did not actually cease till the prerogative power of issuing such Articles was superseded, in 1803, by a corresponding statutory power (*c*).

Account of early Articles of War.

5. Numerous copies of these Articles are in existence, made on the occasions of the various wars, both foreign and domestic, in which England was from time to time involved. The earliest complete code seems to have been the "Statutes, Ordinances, and Customs" of Richard II, issued by him to his army in the ninth year of his reign (1385), and probably on the occasion of the war with France (*d*). These are followed by the statutes of Henry V made by him during his conquest of France (*e*). Domestic dissensions gave occasion for the orders for the English army promulgated by Henry VII, before the battle of Stoke (*f*); and

(*a*) Grose, Mil. Antiquities, ii. p. 58. See Commission in Rymer's Fœdera.
(*b*) See *Barwis* v. *Keppel*, 2 Wilson's Rep. 314.
(*c*) See Mutiny Act of 1803 (43 Geo. III. c. 20).
(*d*) See copy printed in Grose, Mil. Antiquities, ii. pp. 64 *et seq.*
(*e*) Grose, Mil. Antiquities, ii. p. 69. (*f*) Grose, Mil. Antiquities, ii. p. 70.

Ch. II.

in the Great Rebellion the King and the Parliamentary leaders alike governed their troops by Articles of War. On the side of the Crown, Articles or Ordinances of War, as they were then called, were established by the Earl of Northumberland, in 1639, for the regulation of the army of Charles I; whilst, in 1642, Lord Essex, the leader of the Parliamentary forces, under authority given by an ordinance of the Lords and Commons, put forth Articles of War almost in the same language as the Royal Articles of War (*a*). Articles of War were also issued by Charles II in 1666, when the first Dutch war was declared, and in 1672, upon the outbreak of the second Dutch war; and by James II in 1685, on the occasion of Monmouth's rebellion (*b*).

Severity of early Articles.

6. The earlier Articles were of excessive severity, inflicting death or loss of limb for almost every crime. Gradually, however, they assumed somewhat the shape which they bore in modern times, and the Ordinances or Articles of War issued by Charles II in 1672 formed the groundwork of the Articles of War issued in 1878, which were consolidated with the Mutiny Act in the Army Discipline and Regulation Act of 1879, now replaced by the Army Act (*c*).

Illegal attempts to enforce military law in time of peace.

7. Attempts were made from time to time, especially during the despotic reigns of the Tudors, to enforce military law under the prerogative of the Crown in time of peace; but no countenance was afforded to such attempts by the law of England; and commissions for the execution of military law in time of peace issued by Charles I in 1625 and the following years gave rise to the declaration in 1628, contained in the Petition of Right (3 Cha. I, c. 1), that such an exercise of the prerogative was contrary to law (*d*). The law having been thus declared, the question of the legality of the Articles of War issued in 1639 came under the notice of the Council Board in July, 1640, and the lawyers and judges were all of opinion that martial law could not be executed in England "but when an enemy is really near to an army of the King's" (*e*). So, again, it was stated in Parliament by Mr. Secretary Coventry that the articles of 1672 were only to be executed abroad (*f*), and the operation of the Articles of 1685 was limited to the duration of Monmouth's rebellion (*g*). In short, the only direct assistance in the enforcement of military discipline given by the law before the passing of the first Mutiny Act was afforded by certain statutes enforceable before civil and not before military tribunals, which made desertion punishable as a felony (*h*).

(*a*) See these Articles set out in Clode, Mil. Forces, i. App. vi. and viii.

(*b*) Clode, Mil. and Martial Law, pp. 9–19. As to Articles of War by Will. III. see Clode, Mil. Forces, i. p. 503; and by Anne, 2 & 3 Anne, c. 20.

(*c*) A comparison of the ancient with the more modern Articles of War will show how slight are the changes which have been made in military law during a series of years. It is easy to trace in the Articles of Richard II. the germ of the Articles of 1878, and having regard to the changes in custom and manners, the difference in the character of the regulations is less than might have been expected.

(*d*) See extract from the Petition of Right printed below, p. 613.

(*e*) Clode, Mil. Forces, i. p. 23, and App. vii. (*f*) Cobbett's Parl. Hist., iv. 619.

(*g*) Clode, Mil. Forces, i. p. 79, and App. xxiv.

(*h*) 18 Henry VI. c. 19 (1439), made it a felony for a soldier to leave his captain and the King's service without licence. 7 Henry VII. c. 1 (1490), repeated by 3 Henry VIII. c. 5 (1511), provided that if a soldier immediately retained by the King departed out of the King's service without licence of his captain, it should be deemed to be felony. See *The Case of Soldiers*, Coke's Reports, part vi. p. 27 (43 Eliz.), which decided that the first Act was obsolete, but that the second and third were perpetual. See p. 154, note (*e*); see also 2 & 3 Edward VI. c. 2 (revived by 4 & 5 Phil. & Mar. c. 3), which imposed punishments on soldiers furnished at the cost of others, for making away with their horses, and made their departure from service without licence punishable as felony, and provided also for the punishment of officers improperly discharging soldiers.

Ch. II.

Court of Chivalry—the origin of military courts.

8. The origin of later military courts is to be found in the Court of Chivalry, the ordinary judges of which were the Constable, or Lord High Constable, who was originally the King's General; and the Marshal, or Earl Marshal, whose duty it was to marshal the army, and to ascertain whether the persons liable to serve the King in his wars fulfilled their services (*a*).

Constitution of Court of Chivalry.

9. The Court of Chivalry formed part of the *Curia Regis*, or Supreme Court established in England by William the Conqueror. The *Curia Regis* was a Court in a double sense: first, in the sense of being composed of the great officers of State; and secondly, in the sense of being a judicial body, as each of the great officers had judicial authority over the officers and persons belonging to or having dealings with his department. In this division of jurisdiction the Constable or *Comes Stabuli*, or Master of the Horse, (to use the modern designation) was Commander-in-Chief of the army, and had allotted to him the army, and all persons and matters connected therewith: while he and the Marshal together constituted the Court of Chivalry which exercised both civil and criminal jurisdiction (*b*).

Civil jurisdiction of Court of Chivalry.

10. Its civil jurisdiction was that of a court of honour, and consisted in redressing injuries of honour, and correcting encroachments in matters of coat armour, precedency, and other distinctions of families. It also exercised jurisdiction in respect of contracts connected with war out of the realm, and in this respect gradually infringed on the jurisdiction of the ordinary courts, until such infringements were restrained, and the powers of the court were defined, by two Acts passed in the reign of Richard II. The first of these (8 Rich. II. c. 5, 1384) enacted, "that all pleas and suits touching the common law of the land, and which ought to be examined and discussed by the common law, shall not hereafter be by any means drawn or holden before the Constable and Marshal, but that the court of the said Constable and Marshal shall have that which belongeth to the said court;" while the second (13 Rich. II. stat. I, c. 2, 1389) declared the jurisdiction of the court to consist in the "cognizance of contracts touching deeds of arms, and of war out of the realm, and also of things that touch arms or war within the realm which cannot be determined nor discussed by the common law, with other usages and customs to the same matters pertaining."

Criminal jurisdiction of Court of Chivalry.

11. The criminal jurisdiction of the Court, except in time of war, was confined to the punishment of murder and other civil crimes committed by Englishmen in foreign lands (*c*). In time of war, however, its jurisdiction was extended, and the court, which was more usually called the Court of the Constable, acquired somewhat of the character of a permanent court-martial, as it followed the march of the army, and punished summarily, and in accordance with the Articles of War for the time being in force, all offences committed by the troops.

Administration of military law by Court of Chivalry.

12. Such being the jurisdiction of the Court, it is obvious that it must from time to time have been necessary, as, for instance, in case

(*a*) See an account of the duties of the Constable and Marshal, in Stubbs, Constit. Hist. of England, i. p. 338, notes 1 & 2. See also Grose, Mil. Antiquities, i. ch. 7.

(*b*) See as to the jurisdiction of the Court of Chivalry, Coke, 1 Inst. 74*b*; 4 Inst. 127; Bac. Abr. 5th edn., ii. p. 141; Hale, Hist. Com. Law, p. 40; Comyn's Digest, iii. p. 231; Christian's Blackstone, iv. p. 267.

(*c*) The Court seems to have infringed on the jurisdiction of the ordinary criminal courts as well as on that of the ordinary civil courts, and such infringement was restrained by statute in 1399 (1 Henry IV. c. 14).

of simultaneous military operations in different quarters, to provide for its exercise at different places at the same time, and consequently by different persons; and accordingly we occasionally find several Constables and Marshals holding office and exercising jurisdiction at the same time. It is not quite clear whether the several Constables and Marshals from time to time appointed exercised judicial functions in the administration of military law merely by virtue of their offices, or by virtue of special commissions from the Crown. Probably the power to administer such law was chiefly conferred by commissions (*a*), and the administration of military law was thus less affected than would otherwise have been the case by the extinction of the office of High Constable, as a permanent office, in the 13th year of the reign of Henry VIII (1521).

Extinction of office of High Constable.

13. In that year the office, which had in accordance with the general tendency of the great offices of State in early times, become hereditary in the family of the Bohuns, Earls of Hereford and Essex, was forfeited to the Crown on the attainder and execution of Edward, Duke of Buckingham, the then High Constable, and since that time a High Constable has never been appointed permanently, but only on occasions of coronations and like ceremonies (*b*). The office of Earl Marshal, on the other hand, long continued to be held only by grant from the Crown, and did not become hereditary till the 25th year of the reign of Henry VIII, when it was granted to Thomas Howard, Duke of Norfolk, and his heirs male, in which line it still continues.

Administration of military law by virtue of Commissions.

14. This change seriously affected the ordinary jurisdiction of the Court of Chivalry (*c*); but does not seem to have materially affected the administration of military law, which was subsequently provided for (as had probably been the case before the extinction of the office of High Constable), by commissions from the Crown, or by clauses inserted in the commissions of the Commanders-in-Chief authorising them to enact ordinances for the government of the army under their command, and to sit in judgment themselves, or appoint deputies for that purpose (*d*). These deputies consisted of officers, and out of their sittings there gradually arose a new form of military tribunal, under the denomination of a Court or Council of War, which sat at stated times under an officer of a certain rank, who was styled the President.

Councils of War.

Courts-Martial.

15. The transition from a Council of War to Courts-Martial in their present form was a matter more of name than of substance.

(*a*) Hale says (Hist. Com. Law, p. 40), "The Military Court held before the Constable and Marshal antiently, as the *Judices Ordinarii* in this case, or otherwise before the King's Commissioners of that jurisdiction as *Judices delegati*." See also Bac. Abr., ii. p. 152; and as to the appointment of Constables and Marshals, Grose, Mil. Antiquities, i. pp. 191 and 192. Rymer's Fœdera, annis 1399, 1400, and elsewhere.

(*b*) Coke, 1 Inst., 74*b*; 4 Inst. 127. Grose, Mil. Antiquities, i. p. 190.

(*c*) See Coke, 1 Inst., by Hargrave and Butler, 74*b*, note (1). The Earl Marshal undoubtedly exercised the civil jurisdiction of the Court of Chivalry for a long time after the extinguishment of the permanent office of the Constable. See as to the jurisdiction of the Earl Marshal's Court, a letter to Sir John Somers, Attorney-General, from Robert Plot, LL.D., Hearne's Curious Discourses, ii. p. 250. See also the case of *Oldis* v. *Domville*, Shower's Cases in Parliament, p. 58. The last commission to the High Constable to act as a criminal judge was issued by Charles I. in 1631, upon an appeal of treason brought by Donald, Lord Rae, against David Ramsay, Esq., for treasonable words and purposes. In this Court the accused was entitled to wager of battle; but on further reflection the King withdrew his commission and the duel was never fought. See Thomson, Mil. Forces of Great Britain and Ireland, pp. 38, 39. The Court of Chivalry has never been abolished by law. In consequence of an appeal of death in 1818, the wager of battle was shortly after abolished by law. *Ashford* v. *Thornton*, 1 Barn. and Ald. p. 405.

(*d*) Grose, Mil. Antiquities, ii. p. 60, *et seq.*

Ch. II.

The exact time at which courts-martial under that name began to be held is not ascertained, but they are mentioned with the distinction of general and regimental courts-martial in the Articles of War issued on the outbreak of the Dutch War, in 1672, by Prince Rupert, as Commander-in-Chief, under the authority of a commission from Charles II (*a*). There was this difference between the earlier courts-martial and the military courts-martial of the present day, that in the earlier courts the general or governor of the garrison who convened the court ordinarily sat as President, and that the power of the Court was plenary, and their sentences were carried into execution without the confirmation required under the present law.

Military code in time of peace rendered necessary by establishment of standing army.

16. Before the establishment of a standing army no necessity existed for a military code in time of peace; but when, after the Restoration in 1660, such a force was established, the necessity of special powers for the maintenance of discipline began to be felt. The growth of the army was, however, always regarded with jealousy, and Parliament was therefore unwilling to confer such powers on the Crown until it became absolutely necessary to do so. The small number of men forming the garrisons maintained before the Rebellion, and the armies of Charles II and James II, were tolerated rather than sanctioned by Parliament, and were therefore governed without such powers, and rather as the retainers of a great man than as an army. For though in 1662 Charles II issued Articles for the government of his guards and garrisons, offences involving the penalty of death were expressly reserved for trial by the known laws of the land, or by special commission under the Great Seal by the advice of the judges and lawyers. Again, the Articles issued by James II in 1686, which provided for the punishment of offences by courts-martial, expressly prohibited the infliction of any punishment amounting to loss of life or limb in time of peace (*b*). Discipline, therefore, was naturally lax; and when on the accession of William and Mary the maintenance of the army was sanctioned by Parliament, the loose discipline and general disaffection prevalent among the troops led to special powers being granted for their coercion.

Occasion of passing of first Mutiny Act.

17. On the 1st March, 1689, in a debate in the House of Commons on a message from William and Mary, suggesting the suspension of the Habeas Corpus Act, the necessity was urged of a measure for the regulation of the army (*c*), and on the 13th leave was given to bring in a Bill to punish mutineers and deserters from the army for a limited time, and a committee was appointed to prepare it (*d*). Almost at the same time 800 men enlisted by James II, who had been ordered by William to embark for Holland, mutinied at Ipswich, and marched northward, declaring that James was their king, and that they would live and die by him; and this danger, which was reported to both Houses on the 15th March (*e*), doubtless facilitated the passing of the Bill, which was introduced into the House of Commons on the 18th, and having passed through all its stages by the 28th, was passed by the House of Lords on the same day, and received the Royal Assent on the 3rd April (*f*).

(*a*) See Code printed in 1866 by the Royal Commission on Recruiting the Army, Parl. Papers, 1867, Art. 59, p. 241.
(*b*) Memorandum by Mr. Clode.
(*c*) Cobbett's Parl. Hist., v. pp. 154, 155.
(*d*) 10 Comm. Journ. 47.
(*e*) Cobbett's Parl. Hist., v. pp. 129–182.
(*f*) 10 Comm. Journ., 49, 52, 53, 64, 67, 69; 15 Lord's Journ. 164, 165.

Objects and scope of first Mutiny Act.

18. This Bill, which is known as the first Mutiny Act (1 Will. & Mary, c. 5), was prefaced by a preamble declaring the necessity for and the objects of the Act in terms which were repeated without substantial alteration in each subsequent Mutiny Act until the year 1878, and have now been transferred to the preamble of the annual Act bringing the Army Act into force (*a*). Mutiny and desertion when committed by persons in their Majesties' service in the army were made punishable by death or such other punishment as by a court-martial should be inflicted. Power was given to their Majesties or the general of their army to grant commissions for summoning courts-martial for punishing such offences, and it was further provided that the Act should not extend to the Militia, and should not exempt any officer or soldier from the ordinary process of law. The duration of the Act was limited to seven months, from the 12th April, 1689, to the 10th November in the same year.

Second Mutiny Act.

19. On the 19th October, 1689, Parliament reassembled, and a second Mutiny Act (1 Will. & Mary, sess. 2, c. 4) was passed during the session, which received the Royal Assent on the 23rd December, and was ordered to come into force on the 20th, so that an interval of more than a month occurred between the lapse of the first and the coming into force of the second Act (*b*).

Succession of Mutiny Acts till 1878.

20. Successive Mutiny Acts, with the exception of certain short intervals, were subsequently passed annually from the year 1690 to the year 1878 (*c*).

Periods in Mutiny Act worthy of observation.

21. To indicate in detail the changes which took place in the various Mutiny Acts from the first in 1689 to the termination of the series in 1879, on the passing of the Army Discipline and Regulation Act, would be out of place in the present work ; but it may be useful to point out the various periods, so to speak, in military legislation, and the principal changes which took place from time to time, until military law assumed the form which it bears in the Army Act.

From 1689 to 1712.

22. The first period lasted till 1712. During this period the Mutiny Acts did not extend to the dominions of the Crown abroad (*d*), and the principal offences punishable under them were mutiny and desertion ; but no difficulty was felt from the narrow extent of the statutory provisions, inasmuch as the nation was at war during almost the whole period, and the main body of the army was in consequence on active service, and was governed by Articles of War issued by the Crown in pursuance of the prerogative.

(*a*) This preamble emphatically states : (1) That the raising or keeping a standing army within the United Kingdom *in time of peace*, unless it be with the consent of Parliament, is against law. (2) That no man can be fore-judged of life or limb, or subjected in peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of the realm. See the text of the Army (Annual) Act, *infra*, p. 257.

(*b*) Copies of the Mutiny Acts to the end of the reign of Aune will be found in the Record Edition of the Statutes. A copy of the first Mutiny Act will also be found in Clode, Military and Martial Law, Appendix A, p. 182 ; Mil. Forces, i. p. 499 ; also in Grose, Mil. Antiquities, ii. p. 73.

(*c*) The Mutiny Act of 1690 expired on the 20th December, 1691, and the next Act passed on the 14th March, 1692, but it was ordered to be in force from the 10th of that month The Act of 1694 expired on the 1st March, 1695, but was continued in force from the 10th April, 1695, to the 10th April, 1696, by an Act passed on the 22nd April, and having therefore a retrospective operation. Again, there was a lapse from the 10th April, 1698, to the 20th February, 1702, Grose, i. p. 64 ; and the Record Edition of the Statutes. See also table in Clode, Mil. Forces, i. pp. 389-391. The authorities for the statements as to the Mutiny Acts are an analysis of these Acts prepared by Mr W. L. Selfe (now Judge Selfe), of Lincoln's Inn, and a memorandum by Mr. Clode on the Articles of War and Mutiny Acts.

(*d*) The Act was extended to Ireland in 1702 (13 & 14 Will. III. c. 2), and to Scotland in 1707 (7 Anne, c. 4).

Ch. II.

Lapse of Mutiny Act from 1698 to 1702 in time of peace.

23. From 1698 to 1702 the nation was at peace, and the Mutiny Act was allowed to drop. The greater part of the army was disbanded at the same time, and though the King was allowed by statute (10 Will. III, c. 1) to maintain 7,000 troops in England and 12,000 in Ireland, no special powers were conferred upon him for their government.

Renewal of Act in 1702.

24. On the renewal of hostilities in 1702, the Mutiny Act was revived, and extended to Ireland; and in the next year clauses were added for the better enforcement of discipline abroad, which provided that certain offences committed abroad should be triable in England as treason or felony. These clauses, however, were accompanied by a proviso saving the power of the Crown to make Articles of War and constitute courts-martial and inflict penalties by sentence or judgment of the same beyond the seas in time of war, and by a clause empowering the Crown to grant commissions for holding courts-martial within the realm, by which persons committing crimes out of the realm against the Articles of War, and not tried by courts-martial before their return, might be tried and punished according to the Articles of War (*a*).

Power to make Articles of War binding on the army in time of peace when out of the Kingdom, conferred by Mutiny Act of 1712.

25. On the conclusion of the Peace of Utrecht in 1712, the Mutiny Act was again allowed to expire, and was replaced by an Act "for better regulating the forces to be maintained in Her Majesty's service," by which mutiny, desertion, and certain other offences were made punishable by such punishments as a court-martial should adjudge, not extending to life or limb; power being at the same time given to inflict by sentence of court-martial corporal punishment not extending to life or limb, on soldiers for immoralities, misbehaviour, or neglect of duty. The operation of this Act was restricted to Great Britain and Ireland; but at the same time the difficulty was felt of maintaining discipline amongst the troops in the colonies and elsewhere out of the kingdom, as the prerogative power of governing such troops by Articles of War had been suspended by the conclusion of peace. A statutory power was therefore given to the Crown to make Articles of War and constitute courts-martial in any of Her Majesty's dominions beyond the seas, or elsewhere beyond the seas, "in such manner as might have been done by Her Majesty's authority beyond the seas in time of war" (*b*).

Power extended by Mutiny Act of 1715.

26. On the breaking out of the rebellion in 1715, difficulties arose in maintaining discipline among the troops serving in the kingdom. For though troops serving elsewhere in the dominion of the Crown might be dealt with under statutory Articles of War, which could impose death for the most serious military offences, the troops in the kingdom were under a different law. The then existing Mutiny Act (*c*), by imposing a punishment for the most serious military offences, had superseded the prerogative power of making Articles of War in respect of those offences, though committed by troops engaged in war by reason of the rebellion, but as the punishment under the Act was not to extend to life or limb, it was insufficient to maintain discipline. Accordingly an Act was passed in 1715 (*d*), reimposing the punishment of death for mutiny, desertion, and the offence now known as fraudulent enlistment, in Great Britain and Ireland, and conferring on the Crown

(*a*) 13 & 14 Will. III. c. 2; 1 Ann. stat. 2, c. 20 (c. 16 in Ruffhead).
(*b*) 12 Ann. c. 13, in the Record Edition of the Statutes (c. 12 in Ruffhead).
(*c*) 1 Geo. I. stat. 2, c. 3.
(*d*) 1 Geo. I. stat. 2, c. 9.

statutory power to make "Articles for the better government of His Majesty's forces, and inflicting penalties to be proceeded upon to sentence or judgment in courts-martial to be constituted pursuant to this Act."

Mutiny Act of 1718.

27. Subsequently (*a*), the two powers of making Articles of War for the troops in the kingdom and for those in the other dominions of the Crown were combined, and in the Act of 1718 (*b*) received the form which was retained until 1803. The Act of 1718 conferred on the Crown a power to make Articles of War and constitute courts-martial with power to try offences under such articles, and inflict penalties by judgment of the same, "as well within the kingdoms of Great Britain and Ireland, as in any of His Majesty's dominions beyond the seas." The Articles of War made under the Act of 1712 and subsequent Acts not being limited to the time of war, applied to the troops also in time of peace.

Extension of Mutiny Act in Colonies.

28. At about the same time the provisions of the Mutiny Act, which enacted death or corporal punishment for mutiny, desertion, and other specified offences, and which had previously been restricted to offences committed in Great Britain or Ireland, were extended to some of those offences if committed in His Majesty's dominions abroad, and to others wherever committed (*c*); and the Act and statutory power were subsequently re-enacted annually in this form, without material alteration, until 1802 (*d*).

Power to govern by Act and statutory Articles in Kingdom and colonies in time of peace co-extensive with power to govern by prerogative Articles in foreign countries in time of war.

29. By these successive changes the Crown gradually acquired a complete statutory power for the government of the army in time of peace, whether at home or in the colonies, by means of the Mutiny Act and the Articles of War made thereunder, co-extensive with the prerogative power of governing troops serving in foreign countries in time of war by means of Articles of War made under the prerogative; and as further dominions abroad were gradually acquired, the Act and statutory Articles were from time to time extended, so as to provide for the enforcement of discipline among the garrisons maintained in such dominions (*e*). The Act and statutory Articles were not, however, extended to foreign countries, as it was still assumed that the army never could be in a foreign country except in time of war, and troops engaged in active service in such countries were governed as before by the prerogative Articles.

Case of *Barwis* v. *Keppel*.

30. That this was so is clear from the case in 1761 of *Barwis* v. *Keppel* (*f*), in which the Court of King's Bench decided that neither the Mutiny Act nor the Articles of War made thereunder applied to the army when engaged in war abroad. It seems probable, however, that the Articles issued under the prerogative which governed the army when so engaged were the same in form as the statutory Articles which governed the army at other times, and hence arose the question, decided in the negative in the

(*a*) 1 Geo. I. stat. 2, c. 34; 3 Geo. I. c. 2.

(*b*) 4 Geo. I. c. 4.

(*c*) Compare 1 Geo. I. stat. 2, c. 34; 3 Geo. I. c. 2; 4 Geo. I. c. 4; 9 Geo. I. c. 4

(*d*) In 1781 (21 Geo. III. c. 8) the provisions of the Act enacting punishments for certain offences were extended to the specified offences wherever committed; but the power to constitute courts-martial was still restricted to the Kingdom and the dominions of the Crown abroad.

(*e*) The Act and Articles were extended to the Channel Islands in 1756–7 (30 Geo. II. c. 6), and to the Isle of Man in 1766 (6 Geo. III. c. 8); and in 1767 (7 Geo. III. c. 10) special provisions were made as to the constitution of courts-martial in the garrisons of Goree and Senegal, and detachments therefrom. Ireland was excluded from the operation of the Act, but not of the Articles, in 1781 (21 Geo. III. c. 8), a separate Mutiny Act for that country being passed in that year by the Irish Parliament (21 & 22 Geo. III. c. 43 (1)); but it was again included after the Union.

(*f*) 2 Wilson's Reports, 314.

Ch. II.

case referred to, as to whether the Mutiny Act and statutory Articles extended to the army when engaged in war in foreign countries.

Extension of Mutiny Act and statutory Articles to foreign countries in 1803.

31. In 1803, by 43 Geo. III, c. 20, the great change was made of extending the Mutiny Act and the statutory Articles of War to the army whether within or without the dominions of the Crown. This alteration also was made on the occasion of a peace—the Peace of Amiens—and was made, as appears from the Preamble to the Act, in order to provide for the government of the troops engaged in the late war who had not yet been brought home, and who could no longer be governed by prerogative Articles, the power of making such Articles having been suspended on the conclusion of peace.

Prerogative Articles finally superseded.

32. On the resumption of hostilities, the Act and statutory Articles might have been again restricted in their operation to the dominions of the Crown, and the troops engaged in foreign war might have been left to be governed as before by prerogative Articles. This course, however, was not adopted, but the Act and statutory Articles were applied in 1813 towards the close of the Peninsular War to the troops without as well as to those within the dominions of the Crown (*a*); and the prerogative power of making Articles of War in time of war was thus finally superseded by a statutory power. The law as then settled has been continued ever since, and the army, both in peace and war, was governed by the Mutiny Act and statutory Articles until the year 1879.

Army Discipline and Regulation Act, 1879.

33. This brings us to the Army Discipline and Regulation Act, 1879. The inconvenience of having a military code contained partly in an Act of Parliament and partly in Articles of War made under and deriving validity from that Act had long been felt, and led at length to the consolidation of the provisions of the Mutiny Act and Articles of War in one statute.

Army Act, 1881.

34. Two years later the Army Discipline and Regulation Act, 1879, was repealed, and re-enacted with some amendment in the Army Act of 1881.

Thus has been accomplished, after the lapse of more than a century, a wish expressed by Mr. Justice Blackstone in his Commentaries, "That it might be thought worthy the wisdom of "Parliament to ascertain the limits of military subjection, and "to enact express Articles for the government of the army" (*b*).

Annual Acts.

35. The Army Act has of itself no force, but requires to be brought into operation annually by another Act of Parliament, thus securing the constitutional principle of the control of Parliament over the discipline requisite for the government of the army. (*c*) These annual Acts afford opportunities of amending the Army Act, of which considerable use has been made.

(*a*) 53 Geo. III. c. 17, s. 146.

(*b*) Christian's Blackstone, i. p. 415.

(*c*) See Army Act, s. 2; the preamble and first three sections of the annual Act are always in the same form, except that in 1907 the date on which the Army Act expires in certain places abroad was altered: see *infra*, p. 257.

CHAPTER III.

OFFENCES AND SCALE OF PUNISHMENTS.

Classification of military offences.

1. Part 1 of the Army Act classifies under various heads the military offences formerly contained in the Mutiny Act and Articles of War. It includes all the offences for which officers or soldiers in their military capacity are punishable by a court-martial, with the exception of those relating to taking money for commissions (*a*).

Principle classification.

2. The principle adopted in classifying the strictly military offences is that of grouping together offences of a similar character, and ranging the various groups as between themselves in a manner intended to impress the soldier with their relative military importance. For example, the Act begins with *Offences in respect of Military Service* (ss. 4–6), and these are followed by the heading *Mutiny and Insubordination* (ss. 7–11), by way of showing that gross misbehaviour in the field, mutiny, and insubordination rank first among military offences. The above headings are followed by—

Desertion, Fraudulent enlistment, and Absence without leave (ss. 12–15);
Disgraceful conduct (ss. 16–18);
Drunkenness (s. 19);
Offences in relation to Persons in Custody (ss. 20–22);
Offences in relation to Property (ss. 23, 24);
Offences in relation to False Documents and Statements (ss. 25–27);
Offences in relation to Courts-martial (ss. 28, 29);
Offences in relation to Billeting (s. 30);
Offences in relation to Impressment of Carriages (s. 31);
Offences in relation to Enlistment (ss. 32–34);
Miscellaneous Military Offences (ss. 35–40);

Lastly come *Offences punishable by ordinary Law* (s. 41) of which the most serious are only triable by courts-martial under certain circumstances and subject to certain restrictions (*b*).

Offences dealt with in this chapter.

3. For the most part the military offences are laid down by the Army Act in the same, or nearly the same, language as that of the former Mutiny Acts and Articles of War. Those which from their importance or comparative frequency require a more detailed notice than others, are dealt with in this chapter; the rest are explained, so far as necessary, in notes to the Act.

Definition of mutiny.

4. *Mutiny and Insubordination.*—The term "mutiny" implies collective insubordination, or a combination of two or more persons to resist or to induce others to resist lawful military authority. A man cannot be charged generally with mutiny, or with an act of mutiny, but only with some one or more of the specific offences laid down in s. 7. If he has not brought himself within the terms of that section, his offence, however much it may tend towards mutiny, must be dealt with as insubordination, under s. 8 or s. 9, which afford ample powers for the purpose. Thus, where there is

(*a*) Army Act, s. 155.
(*b*) See ch. VII.

Ch. III.

an actual mutiny or a conspiracy to mutiny, all concerned in the mutiny or conspiracy can be tried under s. 7 for causing or conspiring to cause, or joining in the mutiny, as the case may be. If no mutiny or conspiracy exists, a man can only be tried under s. 7 on a charge of endeavouring to persuade some person in His Majesty's forces or in the navy to join in an intended mutiny, or of failing to inform his commanding officer of an intended mutiny.

Framing charge of mutiny.

5. In framing a charge therefore under s. 7, the specific act or acts which constitute the offence must always be alleged ; and the offence is so grave that a charge for it should only be brought on very clear evidence. Cases of insubordination, even on the part of two or more, should, unless there appears to be a combined design on their part to resist authority, be charged under s. 8 or s. 9. If an insubordinate act were committed which could not be charged under any of the sections of the Act relating to mutiny and insubordination, it must be charged under s. 40 as an act to the prejudice of good order and military discipline. Provocation by a superior, or the existence of grievances, is no justification for mutiny or insubordination, though such circumstances would be allowed due weight in considering the question of punishment.

Definition of sedition.

6. Sedition in s. 7 of the Act is the same offence as in the ordinary criminal law, and consists in doing any act or publishing any words tending to bring into hatred or contempt, or to excite disaffection against, the Sovereign, or the government and constitution of the United Kingdom, or either House of Parliament, or the administration of justice ; or to excite His Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of the law, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent and disaffection among His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects. A person is not guilty of sedition who acts in good faith, merely intending to point out errors or defects in the government or constitution or the administration of justice, or to promote alteration of the law by legal means, or to point out, with a view to their removal, matters which have a tendency to produce feelings of hatred between different classes of His Majesty's subjects. It is not, however, intended to imply that an officer or soldier is at liberty to enter on any such course of action or discussion, but simply to point out the legal meaning of the term sedition.

Offences of disobedience to a lawful command.

7. Closely connected with the offence of mutiny is the offence of disobedience to a lawful command, which is punishable under s. 9 of the Act (*a*). No offences differ more in degree than offences of this class. The disobedience may be of a trivial character, or may be an offence of the most serious description, amounting, if two or more persons join in it, to mutiny. Accordingly the object of this section is to enable charges to be framed in such manner as to discriminate between different degrees of the offence.

Definition of graver offence of disobedience.

8. The essential ingredients of the first and graver offence under the section are that the disobedience should *show a wilful defiance of authority*, and should be disobedience of a lawful command *given personally and given in the execution of his office by a superior officer;* in fact, it would ordinarily be such an offence as would be mutiny if two or more persons joined in it. In order to convict a man it must be shown (1) that a lawful command was given by a superior

(*a*) For the history of this enactment, see Clode, Mil. Forces, i. p. 155.

officer; (2.) that it was given personally by such officer; (3.) that it was given by such officer in the execution of his office (*a*); (4.) that the man disobeyed it, not from any misunderstanding or slowness, but so as to show a wilful defiance of his superior officer's authority. For example, a man not falling in for escort duty when ordered to do so by his non-commissioned officer, may have failed to hear the order or may be merely slow in executing it; on the other hand, the refusal may be deliberate and obstinate, so as to show in the clearest manner an intention to defy and resist superior authority.

Of less offence of disobedience.

9. The second and less grave offence laid down by the section consists of disobedience to any lawful command given by a superior officer, which is not accompanied by the essential ingredients of the graver offence. To constitute this offence it is essential that the disobedience should be wilful and deliberate, as distinguished from disobedience arising from forgetfulness or misapprehension, which can only be punished under s. 40 (*b*). The disobedience must have reference to the time at which the command is to be obeyed. If the command be a lawful command, and demands a prompt and immediate compliance, hesitation or unnecessary delay in obeying it may constitute disobedience fully as much as a positive refusal to obey, though mere omission or hesitation can seldom constitute the graver offence referred to in the preceding paragraph; but if the command is of a prospective nature, a man, before he can be guilty of disobedience, must have had an opportunity to obey the command. For example, if the command is to turn out for parade in half an hour, then, until the expiration of that time, no offence of disobedience to a lawful command can be committed. If the soldier on receiving the command makes a reply implying an intention to refuse, and is put in the guard-room before the end of the half hour, he may be charged under s. 8 with using insubordinate language; or under s. 40 with conduct to the prejudice of good order and military discipline in respect of the improper language, but not with the offence of disobedience to a lawful command.

What is a lawful command.

10. "Lawful command" means not only a command which is not contrary to the ordinary civil law, but one which is justified by military law; in other words, a lawful military command, whether to do or not to do, or to desist from doing, a particular act. A superior officer has a right at any time to give a command, for the purpose of the maintenance of good order, or the suppression of a disturbance, or the execution of any military duty or regulation, or for any purpose connected with the amusements and welfare of a regiment or other generally accepted details of military life. But a superior officer has no right to take advantage of his military rank to give a command which does not relate to military duty or usages, or which has for its sole object the attainment of some private end. Such a command, though it may not be unlawful, is not such a lawful command as will make disobedience to it criminal. In any case of doubt, the military knowledge and experience of officers will enable them to decide on the lawfulness or otherwise of the command.

Duty of obedience.

11. If the command were obviously illegal, the inferior would be

(*a*) As to the meaning of "superior officer," and "in the execution of his office," see note to section 8 of the Army Act.

(*b*) Even under s. 40, the neglect must be wilful or culpable and not merely arising from ordinary forgetfulness or error of judgment or inadvertence. See note to the section.

justified in questioning, or even in refusing to execute it, as, for instance, if he were ordered to fire on a peaceable and unoffending bystander. But so long as the orders of the superior are not obviously and decidedly in opposition to the law of the land, or to the well-known and established customs of the army, so long must they meet prompt, immediate, and unhesitating obedience (*a*).

Religious scruples.

12. Religious scruples, however *bonâ fide* they may be, afford no justification for neglect or refusal to obey orders. An officer cannot (for example) plead conscientious scruples as justifying a refusal to go into the trenches on a Sunday, or to pay marks of respect enjoined by superior authority to a religion different from his own.

Desertion and absence without leave.

13. *Desertion, Fraudulent Enlistment, and absence without leave.*—A distinction is made by the Act between desertion and fraudulent enlistment. The latter, which is constituted a separate offence by s. 13, is dealt with hereafter.

The criterion between desertion and absence without leave is *intention*. The offence of desertion—that is to say, of deserting or attempting to desert His Majesty's service (*b*)—implies an intention on the part of the offender either not to return to His Majesty's service at all, or to escape some particular important service as mentioned in para. 16; and a soldier must not be charged with desertion, unless it appears that some such intention existed. Further, even assuming that he is charged with desertion, the court that tries him should not find him guilty of desertion, unless fully satisfied on the evidence that he has been guilty of desertion as above defined. On the other hand, absence without leave may be described as such short absence, unaccompanied by disguise, concealment, or other suspicious circumstances, as occurs when a soldier does not return to his corps or duty at the proper time, but on returning is able to show that he did not intend to quit the service, or to evade the performance of some service so important as to render the offence desertion.

Evidence of intention not to return.

14. It is obvious that the evidence of intention to quit the service altogether may be so strong as to be irresistible, as, for instance, if a soldier is found in plain clothes on board a steamer starting for America, or is found crossing a river to the enemy; while, on the other hand, the evidence is frequently such as to leave it extremely doubtful what the real intention of the man was. Mere length of absence is, by itself, of little value as a test, for a soldier who has been entrapped into bad company through drink, or other causes, may be absent some time without any thought of becoming a deserter; but in the case above put, of a soldier found on board a steamer starting for America, there could be no doubt of the intention, though he might only have been absent a few hours.

Distance by itself not a criterion.

15. Nor can desertion invariably be judged by distance, for a soldier may absent himself without leave and depart to a very considerable distance, and yet the evidence of an intention to return may be clear; whereas he may scarcely quit the camp or barrack yard, and the evidence of intention not to return (by the assumption of a disguise, for example, and other circumstances) may be complete.

Evasion of important service.

16. A man who absents himself in a deliberate or clandestine manner, with the view of shirking some important service, though

(*a*) See s. 9 of the Army Act, and note.
(*b*) See s. 12 of the Army Act, and note.

he may intend to return when the evasion of the service is accomplished, is liable to be convicted of desertion just as if an intention *never* to return had been proved against him. Thus if a man on the eve of the embarkation of his regiment for foreign service, or when called out to aid the civil power, conceals himself in barracks, the court will be quite justified in presuming an intention to escape the important service on which he was ordered and in convicting him of desertion.

Desertion by man on furlough.

17. A man may be a deserter though his absence was in the first instance legal (*e.g.*, being authorised by leave on furlough), the criterion being the same in all cases, namely, the intention of not returning. It is clearly shown by the King's Regulations, and by the explanation on the furlough itself, that a soldier on furlough is still under orders, and that, if without leave, he quits the place to which he has permission to go, or if he disguises or conceals himself so that orders cannot reach him, or if he goes on board a ship about to sail for a distant port, he is liable to be tried and convicted of desertion though on furlough at the time. A soldier, for example, at Ipswich, who obtains a pass to Bristol, and during his leave when without permission to go to Liverpool is found there in civilian costume on board a ship about to sail for New York, may be tried for desertion. It would be for him to show that the absence without leave from Bristol proved against him was innocent, and had nothing to do with desertion.

Attempt to desert.

18. If a soldier commits an act which is apparently a prelude to, or an attempt at, desertion, although no actual absence can be proved, as if he is caught in the act of slipping past a sentry, or climbing over a barrack wall in plain clothes, he may be charged with an attempt to desert.

Soldier surrendering himself.

19. The fact that a soldier surrenders is not proof by itself that he intended to return, even though he is in uniform at the time of surrender. The prosecutor may not be able to prove where the man has been during his absence, but evidence that the military patrols had searched carefully in the neighbourhood of the barracks without finding him, would show that he must have gone to a distance or concealed himself. From this and other circumstances the court may infer that he surrendered because he could not effect his contemplated escape.

General provisions as to desertion.

20. A soldier charged with desertion may be found guilty of attempting to desert or of being absent without leave ; and, on the other hand, a soldier charged with an attempt to desert may be found guilty of actual desertion or of being absent without leave (*a*). In any case of doubt as to whether one or the other offence has been committed, the court should find the prisoner guilty of the less offence. A soldier guilty of desertion forfeits all his prior service, and is liable to serve for the term of his original enlistment, reckoned from the date of his conviction, or of the order dispensing with his trial (*b*).

Fraudulent enlistment.

21. As a general rule, a soldier quitting his corps and enlisting in another should not be charged with desertion, but with fraudulent enlistment, for the very act of his enlisting in another corps (unless in an exceptional case) shows that he did not intend to leave His Majesty's service. On the other hand, if he does so for the purpose

(*a*) See Army Act s 56 (3), (4).

(*b*) Army Act, s. 79. As to court of inquiry, in case of absence without leave for twenty-one days, see s. 72 ; and as to procedure in case of confession of desertion or fraudulent enlistment, see s. 73.

Ch. III.

of avoiding a particular service—*e.g.*, service abroad—or if during his absence he conducted himself so as to show that when he quitted he did not intend to return to the service, but changed his mind—he is, as above pointed out, guilty of desertion, and may be tried accordingly. But as already observed, it will suffice, except in very special cases, to prefer a charge for fraudulent enlistment alone.

Stealing and embezzlement, when tried by court-martial.

22. *Stealing and Embezzlement.*—Ordinary thefts from civilians are left by the Act to be dealt with by the civil courts, or they may be tried by court-martial under s. 41 as civil offences; but the offence of stealing or embezzling the money or property of an officer or soldier or of any military institution has, in accordance with long-established practice, been made expressly punishable as a military offence (*a*).

Stealing from a comrade.

23. Stealing from a comrade is regarded as peculiarly disgraceful, seeing that in the daily routine of barrack life, soldiers must constantly leave their arms, accoutrements, or kits exposed, as well as private property, such as money, watches, pipes, &c., trusting to the honour of their comrades. When missing articles are private property, and are found in the possession of another, there is a strong presumption that they were stolen, especially if the accused absented himself, and is discovered to have pawned or sold them. But it must be recollected that an intention to steal is essential, and that the mere taking of an article without that intent is not criminal. So that if a soldier openly takes an article belonging to another, and returns it, or, though he absented himself, did not secrete the article or make any attempt to sell or pawn it, then the presumption is against his being guilty of stealing. It will often be desirable to obtain evidence as to any custom of borrowing which may have prevailed in a particular room, or as between the accused and the owner of the article or other comrades, and as to any other circumstance tending to show whether the accused might reasonably have supposed that his taking the article would not be objected to. The restoration of an article does not, of course, by itself prove that the article was not stolen, but evidence of the above nature will often go far to show whether an article was in fact stolen or not. Again, the accused may show that he obtained the articles in a *bonâ fide* transaction, or that he found them apparently without an owner, and without any name or mark on them by which the owner could be found. The fact of lost articles being found in the valise, or in the bed of a soldier, is not by itself proof that he stole the articles. They might have been put there unknown to him, perhaps intentionally by the real thief. A soldier should not in such a case be tried for stealing unless there are other circumstances from which it might be inferred that the articles were in his valise or bed with his knowledge. Evidence that a soldier was a suspected thief, or that he had on previous occasions stolen other articles from other comrades, is not admissible to show that he had anything to do with a particular theft; but such facts might be adduced as evidence that the taking of articles found in his possession was not innocent (*b*). The improper possession by one soldier of a comrade's necessaries, where there is no evidence of theft, is a different question: it is not an offence against the comrade,

(*a*) Theft from a comrade will as a rule be tried by court-martial under s. 18 (4) of the Army Act, K.R., para. 556; but under special circumstances, such as those in the case of *Marks* v. *Frogley*, L.R. [1898] 1 Q. B. 888, where the theft was alleged to have been committed immediately before a volunteer corps quitted the camp where they had been trained with regulars, may be tried by a civil court.

(*b*) See ch. VI, paras. 22–24.

but is an offence against military rules, and may, irrespectively of any fraudulent intent, be punished under s. 40.

Embezzlement.

24. The offence of embezzlement under this Act is committed where one entrusted with the care or distribution of public or regimental money or property, and, being thus in lawful possession of it, appropriates it to the use of himself or of some person connected with him (*a*). A subordinate is frequently tempted to commit the offence, if he finds that his transactions are not regularly supervised, and that minor irregularities pass unnoticed. All officers, therefore, who have to do with the supervision of canteens or the accounts of pay sergeants or other non-commissioned officers, should be most careful to see that the forms and regulations of the service are strictly and invariably observed. Nothing can be more unjust and inexcusable than for an officer, through indolence or carelessness in doing his own duty, to expose a soldier to temptation which may prove his ruin.

Drunkenness. Of officer.

25. *Drunkenness.*—Drunkenness includes intoxication from the effects of opium or any similar drug as well as from liquor. Under the Army Act, an officer should be tried for the specific offence of drunkenness, whether on duty or not on duty, as the case may require, instead of being charged, as formerly, in the case of drunkenness not on duty, with conduct unbecoming the character of an officer and a gentleman.

Of non-commissioned officer.

26. A non-commissioned officer, no less than a commissioned officer, may be tried by a court-martial for even a single act of drunkenness, whether committed on duty or not on duty. The commanding officer has, however, complete discretion whether to send the offence for trial or not, as the obligation of dealing summarily with a private soldier guilty of simple drunkenness under certain circumstances, does not extend to the case of a non-commissioned officer (*b*).

Jurisdiction of courts-martial to try drunkenness of private soldier.

27. A private soldier also can be tried for any act of drunkenness, whether on duty or not on duty, by a court-martial under s. 19; but the practical effect of this section is materially modified by s. 46, which declares that the commanding officer shall deal summarily with the case of a soldier charged with drunkenness, unless he has been guilty of drunkenness on not less than four occasions in the preceding 12 months, or unless the offence was committed on active service or on duty, or after the offender was warned for duty, or when the offender was by reason of drunkenness found unfit for duty. Although, therefore, under s. 19 courts-martial have complete jurisdiction to try and punish simple drunkenness, and this jurisdiction is not limited by s. 46, yet a commanding officer will be guilty of a grave breach of duty and of an offence against the Act, if he disregards the directions in s. 46 with respect to dealing summarily with simple drunkenness of a private soldier (*c*).

Drunkenness of soldier on duty.

28. In a military point of view, the offence of being "drunk on duty" is considered in reference to the soldier being fit or not fit for duty. There cannot be any distinction such as drunk, or very drunk, when on duty. Soldiers therefore are carefully inspected before being put on duty, so as to ascertain their fitness. If the superior, knowing a man to be drunk, out of good nature allowed

(*a*) See s. 17 and note; and as to the embezzlement generally, see ch. VII, para. 59 As to orders for restitution of stolen or embezzled property, see s. 75.

(*b*) Ss. 46, 183 (1). And see K.R. 499.

(*c*) See K.R., paras. 508–513. The directions in s. 46 do not affect the right of the soldier to elect to be tried by a district court-martial, s. 46 (8).

Ch. III.

him to proceed with the duty, or, if through carelessness, he passed a man as sober when he was not sober, then it would be desirable as a rule to try the man for being drunk, and not for being drunk on duty.

A soldier on the line of march is on duty from the beginning to the end of the march, and if drunk in his billet or halting place may, if necessary, be tried for being drunk on duty (*a*).

Drunkenness of soldier after being warned for duty.

29. Although a soldier found to be drunk when required for any duty for which he has been duly warned, can only be charged with drunkenness, and not with drunkenness on duty, yet punishment may be awarded as if it were drunkenness on duty. On the other hand, in ordinary routine circumstances, a soldier unexpectedly called on to perform some duty, for which he has not been warned—as (for example) if summoned from a canteen or from some public sports—and found to be unfit for duty, should in practice be dealt with as for simple drunkenness.

Drunkenness of soldier not on duty.

30. In the offence of simple drunkenness there are practically various grades, for the purpose of the amount of punishment; and evidence should be given as to the circumstances of the drunkenness, and as to whether the drunken man was riotous or not, so that punishment may be apportioned accordingly. Nothing can justify a soldier striking or offering violence to a superior, and great care is therefore enjoined to be taken to avoid bringing drunken soldiers in contact with their superiors. Mere abusive and violent language used by a drunken man, as the result of being taken into custody, should not be used as a ground for framing a charge of using threatening or insubordinate language to a superior officer. If a court-martial be required at all, discipline will generally be upheld by merely bringing the man to trial either for drunkenness (if he is liable to be tried) or for an offence under s. 40, treating the language as in the nature of riotous conduct only, and to that extent aggravating the offence. Simple drunkenness is as a rule sufficiently dealt with by the imposition of a fine (*b*).

Drunkenness considered in relation to other crimes.

31. Drunkenness often has to be considered by courts-martial not as an offence itself, but in relation to greater offences, which it accompanies. It is a principle of English law that drunkenness is no excuse for crime. But where intention is of the essence of the offence, drunkenness may justify a court-martial in awarding a less punishment than the offence would otherwise have deserved, or reduce the offence to one of a less serious character. Thus if an ordinarily steady respectful man commits himself when drunk by the use of insubordinate language, it may be clear that he did not really intend to be insubordinate; and though the offence cannot be passed over, yet a more lenient punishment will meet the justice of the case, than if the same man had used the same language deliberately when sober. So, too, acts, which if done deliberately would show a wilful defiance of authority, may, if the man were drunk, be regarded as amounting only to the less offence of simple disobedience. So, too, if it should appear that a man absenting himself under circumstances which might ordinarily show an intention of not returning, was drunk, the court would be justified in treating the absence as a mere drunken frolic, and finding the man, though charged with desertion, guilty of absence without leave. So again, a man so drunk as to be incapable of attending parade,

(*a*) See K.R., para. 510.
(*b*) K.R. para. 497.

should be charged with drunkenness rather than with an offence under s. 15 (2) of the Act.

Conduct to prejudice of military discipline.

32. The remaining sections of this part of the Act relating to military offences do not call for special notice in this Chapter, with the exception of the proviso to the section (40) dealing with conduct to prejudice of good order and military discipline, which provides that no charge shall be made under that section, for an offence which is a specific offence under any other provision of the Act, and is not a civil offence ; although the conviction of a person so charged is not necessarily invalidated. Before, then, an offender is charged under this section, the convening officer must satisfy himself not only that the act, conduct, disorder, or neglect is to the prejudice of good order and military discipline, but also that it is not any one of the offences specifically punishable under the Act. If he fails to do so he will be responsible for contravening the Act, notwithstanding that the conviction is not invalidated. Attempts to commit offences specified in the Army Act are not, with one or two exceptions, specifically made offences, and therefore can be tried under this section. But civil offences, *e.g.*, frauds, should not be tried under this section.

Offences committed "on active service."

33. An important distinction is made by the Act, in that certain offences are punishable more severely when committed on active service (*a*) than at other times. Instances of this distinction will be found in sections 6, 8, 9, and elsewhere. A sentinel, for example, found asleep or drunk on his post, while on active service, would be liable to suffer death if the character and circumstances of the offence were sufficiently grave, while if he were not on active service he could at the utmost be sentenced to imprisonment (*b*). Supposing the evidence on the trial to prove that an offence charged as having been committed on active service was committed not on active service, the offender may be found guilty of the latter offence only, and be sentenced accordingly to the less punishment (*c*).

Offences punishable by ordinary law.

34. Jurisdiction is given by s. 41 to courts-martial to try ordinary civil offences, from murder and treason downwards, when committed by persons subject to military law. The limitations on the exercise of this jurisdiction and the other provisions of the section are explained in Chapter vii (*d*) ; which also contains for the information of officers who may have to try such offences, a short statement of the laws relating to them.

Scale of punishments.

35. Having laid down the offences, the Act enacts (s. 44) a scale of punishment for officers and soldiers respectively. With two exceptions, each particular offence laid down in the Act has a *maximum* punishment assigned to it ; and then, by s. 44, provision is made enabling a court-martial to award a less punishment. If, for example, the maximum punishment assigned to an offence is penal servitude, either imprisonment or any one of the punishments lower in the scale for officers and soldiers respectively can be awarded in its place. The punishments named in the Act for each particular offence are *maximum* punishments, and a maximum punishment is only intended to be imposed when the offence committed is the worst of its class, and is committed by an habitual offender, or is committed under circumstances which require an example to be made. The two exceptions from the above rule are the offence of behaving in a scandalous manner unbecoming the character of an officer and a gentleman, in which case the only

(*a*) For the definition of "active service," see s. 189 (1).
(*b*) Army Act, s. 6 (1) (*k*).
(*c*) Army Act, s. 56 (5).
(*d*) See also note to s. 41.

Ch. III.

punishment is cashiering (*a*); and the civil offence of murder in which case death is the only punishment.

Punishment of detention.

36. The scale of punishments received an important modification in 1906, when a new punishment—"detention"—was introduced into it, to rank immediately below imprisonment. The object of the change is explained in the preamble to s. 4 of the Army (Annual) Act, 1906, which is as follows:—"For the purpose of preventing soldiers convicted of offences against discipline under the Army Act, and not discharged with ignominy, from being subjected to the stigma attaching to imprisonment, the following amendments shall be made in the Army Act." A court-martial ought not, therefore, to sentence to imprisonment a soldier convicted of a purely military offence, and if the court imposes imprisonment in contravention of this principle, the confirming officer should, except under very special circumstances, commute the sentence to a sentence of detention. If the sentence is imprisonment and discharge with ignominy, the confirming officer, when commuting to detention, must also remit the discharge with ignominy, as such a discharge cannot accompany a sentence of detention (*b*).

Field punishment.

37. The Army Act, as a substitute for the formerly existing power of inflicting corporal punishment, provides (s. 44, proviso (5)) that a court-martial may award for any offence committed by a soldier on active service such field punishment, other than flogging, as may be directed by rules made by a Secretary of State. The rules made in pursuance of the above enactment must be referred to for further details on this subject. (*c*).

Articles of War.

38. In conclusion must be noticed the power of His Majesty, under s. 69, to make Articles of War for the better government of officers and soldiers. Such Articles may be made applicable to officers and soldiers at home or abroad, and must be judicially noticed by all judges, and in all courts. The penalty of death or penal servitude cannot be imposed by an Article of War, except for an offence expressly made liable to such punishment by the Act itself; nor can an Article of War render any offence punishable under the Act liable to be punished in a manner which does not accord with the provisions of the Act. The enumeration of offences in the Act is so complete, that the necessity for the exercise of the power of making Articles of War for the purpose of creating offences would appear unlikely to arise.

(*a*) Army Act, s. 16.
(*b*) *See* generally K.R. para. 583.
(*c*) The rules are printed below, p. 598.
The term "field punishment" has been substituted by the Army (Annual) Act, 1907, s. 10, for the term "summary punishment," and that enactment also extended the power to award such punishment to the case of any offence on active service, the power having been previously limited to aggravated offences of drunkenness, offences of disgraceful conduct, and offences punishable with death or penal servitude.

CHAPTER IV.

ARREST: INVESTIGATION BY COMMANDING OFFICER: SUMMARY POWER OF COMMANDING OFFICER: PROVOST-MARSHAL.

(i.) *Arrest.*

Military custody of person charged with offence.

1. Whenever any person subject to military law is charged with an offence, he may be taken into military custody, which in the case of an officer means arrest, and in the case of a private soldier means confinement. Non-commissioned officers are, as a rule, put in arrest, and not in confinement. Persons subject to military law as officers under s. 175 will be put in arrest; persons subject to military law as soldiers under s. 176 will usually be put in confinement (*a*).

Arrest of officer.

2. An officer is put in arrest either directly by the officer who orders it, or more generally through the medium of a staff officer, *i.e.*, by the adjutant or a field officer of the regiment when the arrest is ordered by the commanding officer, and by an officer of the general staff when the arrest is ordered by a superior officer, and not through the channel of the commanding officer. The order may be verbal or written, the latter as being more formal being the preferable mode, except where the offence is committed in the presence of the commanding or superior officer. On being put in arrest, an officer is deprived of his sword.

Arrest may be close or open.

3. The arrest may be either close or open, according to the direction of the officer who ordered it. The King's Regulations direct that an officer in close arrest shall not leave his quarters or tent except to take exercise under supervision; but an officer in open arrest may be permitted to take exercise at stated periods within certain limits, which are usually the precincts of the regimental barracks or camp; he must not, however, appear out of uniform, nor at mess, nor at any place of amusement or public resort, such, for instance, as a billiard room, nor must he wear sash, sword, belts, or spurs (*b*). An officer placed under arrest should always be informed in writing of the nature of the arrest, which will be governed by the circumstances of the case; and any change in the nature of the arrest should be notified in writing to him. An officer may, if the circumstances of the case require it, be placed in the charge of a guard, piquet, patrol, or sentry, or, if on active service abroad, in the custody of a provost-marshal (*c*). An officer under arrest may be ordered or permitted to attend as witness before a court-martial, or before a civil court.

Arrest usually preceded by investigation.

4. As a rule, a commanding officer will not place an officer under arrest without investigation of the complaint or the circumstances tending to criminate him; though cases may occur in which it would be necessary to do so. It is the duty of the commanding officer to report each case of arrest without unnecessary delay to the proper superior military authority (*d*).

(*a*) Army Act. s. 45 (1), (2). K.R., paras. 465–473.
(*b*) K.R., paras. 466, 467.
(*c*) K.R., para. 465.
(*d*) K.R., para. 469. See for summary of the provisions of the Act and rules for preventing unnecessary detention in arrest, s. 45 of the Act, and note.

Ch. IV.

Arrest of senior by order of junior officer in certain circumstances.

5. It is expressly laid down by s. 45 (3) of the Army Act, that a junior officer may order the arrest of a senior (even of a different corps or branch of the service), if engaged in any quarrel, fray, or disorder; and in the case of any glaring impropriety, such as drunkenness on parade, it may become the *duty* of a junior to take the same extreme measure.

Case of Lt.-Col. H. in 1819.

6. This was clearly shown by the order on a court-martial for the trial of Brevet Lieut.-Col. H. at Plymouth, in 1819. Lieut.-Col. H. appeared at a regimental parade in a state of intoxication, and was put under arrest by Captain E., one of his junior officers. He was tried "for being drunk on duty when under arms inspecting the "guards and piquet of the Regiment of Foot," and sentenced to be cashiered; the court observing that the occurrence of a commanding officer being put under arrest while in the actual command of a regimental parade was unprecedented in their experience; and that the circumstances detailed in evidence were not of that imperious urgency as to have called for the immediate adoption of so very strong a measure. The Prince Regent, however, in confirming the finding and sentence, took occasion to signify that he could not allow the observations of the court to go forth to the army without explaining "that the court are in error when they "suppose that circumstances may not occur even upon a parade to "justify a junior officer in taking upon himself the strong respon-"sibility of placing his commander in arrest; such a measure must "rest alone upon the responsibility of the officer who adopts it, "and there are cases wherein the discipline and welfare of the "service require that it should be assumed. In the present "instance the sentence of the court appears to afford a full justifi-"cation of Captain E.'s conduct in the placing of Lieut.-Col. H. in "arrest, though it would have been more regular if that officer "had continued to rest upon his own responsibility, without "calling a meeting of his brother officers to support it by their "opinions."

Officer under arrest has no right to demand court-martial.

7. The King's Regulations point out that an officer put under arrest has no right to demand a court-martial, nor, after he has been released by proper authority, to persist in considering himself under arrest, or to refuse to return to his duty. If he conceives himself wronged by arrest, his remedy is a complaint in manner prescribed by the Army Act (*a*).

Release of officer.

8. The release of an officer under arrest may be ordered by the officer who imposed the arrest, or the superior to whom it may have been reported; but, as a rule, the release is not to be ordered without the sanction of the highest authority to whom the case may have been referred (*b*).

No privilege of Parliament from arrest.

9. Peers and Members of the House of Commons are not privileged from arrest; but the fact and cause of the arrest should always be communicated to the Lord Chancellor, or to the Speaker, as the case may be.

Non-commissioned officers.

10. The rules which govern the close and open arrest of officers apply also to non-commissioned officers. A non-commissioned officer charged with a serious offence will, as a rule, be placed under arrest forthwith; but in case of doubt as to the commission of the offence, the arrest may be delayed; and if the offence is not serious, it may be disposed of without previous arrest (*c*).

(*a*) K.R., para. 470, Army Act, s. 42; see also K.R. para. 127.
(*b*) K.R., para. 468.
(*c*) See para. 3 above. K.R., para. 471.

Confinement of private soldiers.

11. Private soldiers taken into military custody (not under sentence) are confined in charge of a guard, piquet, patrol, or sentry, or of a provost-marshal, or are placed in open arrest (*a*); but this does not apply to minor offences, such as absence from tattoo and other roll-calls, overstaying a pass, and other slight irregularities in quarters, which are to be disposed of by the company, &c., commander, or commanding officer, without the offender being previously lodged in the guard-room. In permanent barracks soldiers confined under charge of a guard will usually be detained in the guard detention room (*b*). They are never to be kept in irons, except when it is necessary for safe custody, or to prevent violence. A soldier against whom a charge for a minor offence is pending, is not treated as in arrest, and attends all parades, though he will not be detailed for duty. Where troops are in billets or on the line of march, or accommodation for the confinement of soldiers is otherwise not available, a soldier in military custody (not under sentence), may be committed by order of his commanding officer, for a period not exceeding seven days, to any civil prison or lock-up (*c*). An offender, while in close arrest, is not required to perform any military duty further than may be necessary to relieve him from the care of any cash, stores, &c., for which he is responsible; nor is he permitted to bear arms, except by order of his commanding officer in case of emergency or on the line of march; and if by error he is ordered to perform any duty, his offence is not thereby condoned (*d*). On board ship he should, if not in close confinement, take his regular turn of watch, although he should not be placed on guard (*e*).

A man may be confined while awaiting trial by court-martial or the promulgation of the finding and sentence of the court-martial which tried him, and may be so confined in a branch detention barrack (*f*). A man when confined can only be released by a competent authority—*e.g.*, if confined in a regimental guard-room he can only be released by the authority of the commanding officer of the regiment, and if in a garrison guard-room by the authority of the officer commanding the garrison.

Breaking arrest.

12. The offence of breaking or attempting to break arrest or confinement renders an officer liable to be cashiered, and a soldier liable to imprisonment (*g*). An offender confined to quarters, and quitting them for any purpose whatever, however short the time of his absence, is strictly speaking guilty of breaking his arrest. The gravity of the offence will depend mainly on whether the circumstances do or do not disclose deliberation, and intentional defiance of authority.

Improper release and suffering escape.

13. The offences of releasing without proper authority a person in custody, and of suffering a person in custody to escape, are punishable in some cases more severely; an offender who acts *wilfully* being liable to penal servitude (*h*). It will be remembered that here, as elsewhere, the punishments specified are maximum punishments.

Receiving accused persons into custody.

14. An officer or non-commissioned officer commanding a guard, or a provost-marshal, cannot refuse to receive or keep any person

(*a*) K.R. para. 473.
(*b*) K.R. paras. 473-476. As to soldiers in a state of drunkenness, see para. 478.
(*c*) K.R. para. 476. For form of order, see Form Q in App. III to Rules of Procedure. As to the duties of N.C. officers in relation to the confinement of private soldiers, see para. 477.
(*d*) K R. para. 482.
(*e*) K.R. para. 1612.
(*f*) K.R. para. 648, and see Form R in App. III to Rules.
(*g*) Army Act, s. 22. As to escape, see note to that section.
(*h*) Army Act, s. 20.

Ch. IV.

committed to his custody by an officer or non-commissioned officer; but the committing officer or non-commissioned officer must, at the time of committal, or within 24 hours after, deliver a written account, signed by himself, of the offence with which the person committed is charged (*a*).

Account of offence.

15. This "account" should be a concise summary of the evidence on which the accused was committed into custody, and should contain, without any unnecessary detail, all the material points of the offence. If the account states that the accused was drunk, or absented himself, and a witness subsequently adds before an investigating officer that the accused struck a non-commissioned officer, or used threatening language, the presumption is that the conduct of the accused had not at the time been thought sufficiently serious to amount to an offence, and to be entered in the account. As a rule, then, the investigating officer would treat the fresh evidence merely as showing the nature and degree of the offence originally deposed to; but in some cases he may consider it advisable to make this new evidence the substance of a specific charge.

Omission to deliver account.

16. The omission of the committing officer to deliver the "charge" (as the "account" is generally termed) will not justify the commander of the guard or provost-marshal in rejecting, much less in releasing, the accused. His proper course, in the event of such omission, is to take steps for procuring the "charge," or to report to the officer to whom his guard report is furnished that no "charge" has been delivered. If the "charge" or evidence sufficient to justify the retention in custody of the accused is not forthcoming within 48 hours after committal, the latter officer will order the release of the accused (*b*).

Duty of commander of guard to report name and offence of accused.

17. It is the duty of the commander of the guard (immediately on the relief of the guard) to report in writing to the officer to whom he is ordered to report, the name and offence of the accused, and the name and rank of the committing officer; and he should include in his report the "account" above mentioned, or, if it has not been delivered, should state the fact. If he fails to make this report within 24 hours after the accused was committed, or where he is relieved from his guard within that period, then immediately on being so relieved, he himself commits an offence. The report will, as a rule, be made to his commanding officer (*c*).

(ii) *Investigation by Commanding Officer.*

Investigation by commanding officer.

18. The object of the above report is to enable the commanding officer of the accused, without delay, to institute an investigation of the case. There is some difference in the procedure in the case of an officer and in that of a soldier.

In case of officer.

19. The case of an officer may be referred to a court of inquiry, and need not, unless the officer requires it, be formally investigated before his commanding officer (*d*); but the commanding officer, in the case of an officer as well as of a soldier, is made by s. 46 of the Army Act responsible for dismissing the charge, if it ought not to be proceeded with; and, if it ought to be proceeded with, for taking the proper steps to bring the offender before a court-martial.

(*a*) Army Act, s. 45 (4).
(*b*) K.R. para. 463.
(*c*) Army Act, s. 21 (3), and K.R., paras. 463, 464. See for summary of the provisions of the Act, and rules for preventing unnecessary prolongation of confinement, s. 45 of the Act, and note.
(*d*) Rule 8 and note.

20. A case of a non-commissioned officer or soldier will, in the first instance, be investigated by the company, &c., commander. Where the accused is a private, this officer, if he decides that the case is a minor offence or a case of drunkenness, or of absence without leave, with which he can deal under the powers possessed by, or delegated to, him under the King's Regulations (*a*), will either dispose of the case himself or leave it to his commanding officer to deal with. The case of a non-commissioned officer must always be left to be dealt with by the commanding officer, except that the company, &c., commander has power to admonish (but not reprimand) a non-commissioned officer not above the rank of corporal (*b*). A case left to be dealt with by a commanding officer must be investigated by the commanding officer himself. He can dismiss the charge, or remand the case for trial by court-martial; can apply to superior military authority; or, in the case of a private soldier, can award punishment summarily, subject to the right of the soldier, in any case where the award or finding involves forfeiture of pay, and in any other case where the commanding officer proposes to deal with the offence otherwise than by awarding a minor punishment, to elect to be tried by a district court-martial, and subject to the limitations imposed on the discretion of commanding officers by the King's Regulations (*c*). A warrant officer, or a person subject to military law as a soldier, but not belonging to His Majesty's forces, cannot be summarily punished, and a non-commissioned officer, though not legally exempt, is not allowed by the King's Regulations to be summarily punished (*d*.)

In case of soldier.

21. This duty of investigation by the commanding officer requires deliberation, and the exercise of temper and judgment, in the interest alike of discipline and of justice to the accused. The investigation usually takes place in the morning, and must be conducted in the presence of the accused (*e*); but, in the case of drunkenness, an offender should never be brought up till he is perfectly sober (*f*).

Duty of officer conducting investigation.

22. After the nature of the offence charged has been made known to the accused, the witnesses present on the spot who depose to the facts for which he has been confined are examined. In every case where the commanding officer has power to deal with the case summarily, the accused has a right to demand that the witnesses against him be sworn; and he will also have full liberty of cross-examination (*g*).

Examination of witnesses.

23. The commanding officer, after hearing what is urged against the accused, will, if he is of opinion that no military offence at all, or no offence requiring notice, has been made out, at once dismiss the charge (*h*). Otherwise, he must ask the accused what he has to say in his defence, and whether he has any witnesses to call, and will give him full opportunity both of making a statement and of supporting it by evidence, including the evidence of the accused himself and that of his wife (*i*). The commanding officer will then consider whether to dismiss the case or to deal summarily with the case himself, or to adjourn the case for the purpose of having

Decision of commanding officer.

(*a*) K.R., paras. 484 and 501.
(*b*) K.R., paras. 484 and 499.
(*c*) Army Act, s. 46, Rules 4, 7. K.R., paras. 483–491; below para. 23.
(*d*) Army Act, s. 182 (1); 184 (2). K.R., para. 499: and as to summary punishments, see below, para. 31, &c.
(*e*) Rule 3 (A).
(*f*) See K.R., para. 478, which suggests the lapse of 24 hours before he is brought up.
(*g*) Army Act, s. 46 (6) and note; Rule 3 (A), (B) and note; *q.v.* also as to the evidence of the accused himself and of his wife.
(*h*) Rule 4 (A).
(*i*) Rule 3 (A) and note.

Ch. IV.

the evidence reduced to writing, with a view to having the case tried by court-martial (*a*). First and less serious offences of the class which he has authority under the King's Regulations to dispose of summarily, without reference to superior authority should, as a rule, be so dealt with, subject to the soldier's right to elect before the award to be tried by a district court-martial. If the offence does not belong to the above class, and the commanding officer desires to dispose of it summarily, he must refer to superior authority by letter stating briefly the circumstances, and accompanied by the conduct sheets of the accused. A charge for any offence, of whatever class, may, if the commanding officer thinks fit, be referred to superior authority, with an application for a district court-martial (*b*).

Caution as to expressing opinion.

24. During the investigation, the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the guilt of the accused, or one which might prejudice him at a subsequent trial (*c*). It frequently happens that officers who have been present at the investigation are detailed as members of the court convened in consequence of it; therefore, nothing should be said or done which might, though unconsciously, bias their judgment beforehand.

Right of soldier to claim court-martial.

25. If the commanding officer proposes to deal with the case summarily, otherwise than by awarding a minor punishment, he must ask the soldier whether he desires to be dealt with summarily, or to be tried by a district court-martial; and the soldier may, if he chooses, thereupon elect to be tried by a district court-martial. Save as aforesaid, a soldier has no right to claim a court-martial, except that, where the commanding officer has omitted to put the proper question to him, the soldier has a subsequent opportunity, as provided by Rule 7, of making the claim (*d*).

Adjournment for taking a summary of evidence.

26. Where a commanding officer adjourns the case for the purpose of having the evidence reduced to writing, the evidence given by any witnesses before him must be taken down in writing in the presence of the accused (*e*); the accused must be allowed to cross-examine within reasonable limits, especially if there is any variance between the evidence as taken down and that given on the prior investigation. Any statement made by the accused, which is material to his defence, will also be added in writing (*f*), but the accused must be warned that this will be done.

Mode of taking summary.

27. The evidence and statement, if any (called the summary of evidence), must be taken down in the presence of the commanding officer himself, or of some officer deputed by him (*g*). Great care is necessary in the performance of this duty; the exact words used by the witness or accused should as nearly as possible be taken down, and the summary should be free from any expression of opinion or conjectures, and from matter not bearing on the case. The difference not infrequently observable between the statements recorded in the summary of evidence and the evidence given before a court-martial may often be traced rather to the hasty or careless

(*a*) Rule 4 (B).
(*b*) Rule 4; K.R. paras. 487-489.
(*c*) K.R., para 483.
(*d*) Army Act, s. 46 (8); Rule 7.
(*e*) The accused and his wife, even if they have given evidence before the commanding officer, cannot be compelled to repeat their evidence unless the accused makes an application to that effect. See note to Rule 4 (C)—(E).
(*f*) Rule 4 (E).
(*g*) Rule 4 (C).

preparation of the summary, than to any prevarication or desire to mislead on the part of the witnesses.

Remand of accused for trial by court-martial.

28. When the summary of evidence has been taken, the commanding officer must consider it and determine whether or not to remand the accused for trial by court-martial. It may be that on reading the evidence the commanding officer will come to the conclusion that the case is one which ought to be disposed of summarily In such a case, unless the accused has himself elected to be tried by district court-martial, the commanding officer will either rehear the case and dispose of it summarily, or, if he is not competent to do so without leave from superior military authority, refer the case to the proper authority. In any other case the commanding officer will remand the accused for trial by court-martial (*a*). If a court-martial is ordered or applied for, the accused can be kept in arrest or confinement until the charge is disposed of. It is the duty of the commanding officer on reading the summary of evidence to note whether or not the evidence taken down in the summary corresponds with the evidence given at the inquiry before him.

Use of summary of evidence.

29. The summary of evidence, like the depositions before justices, may be used for certain limited purposes at the trial, and also for the purpose of giving to the accused notice of the charge he will have to meet, and to the convening officer and president of the court notice of the case to be tried. Either the summary itself or a true copy must be laid before the court-martial before whom the accused is tried ; and a copy must be given gratis to the accused at the time he is warned for trial (*b*).

Convening court.

30. An application for a court-martial should usually be disposed of at once ; but if the convening officer detects matter showing culpable neglect or improper conduct on the part of the superiors of the accused, he may delay assembling a court for the purpose of making inquiry. In most instances, the offences referred to him by the commanding officer in pursuance of the King's Regulations (*c*) may well be disposed of by an inferior court, unless circumstances render it necessary in the interests of discipline to deal with them more severely. The officer who convenes a court-martial is responsible for the correctness of the charges (*d*), and will, if necessary, revise them after considering the evidence as shown in the summary. The charge sheet containing the charges as approved by the officer convening the court-martial will be sent to the president, as well as the summary of evidence, or a true copy thereof, and will be laid by him before the court-martial (*e*). The prosecutor should have a copy of the charge sheet and summary, or at least should have access to them (*f*).

(iii.) *Summary power of Commanding Officer.*

Power of commanding officer to deal with non-commissioned officer or soldier.

31. The power of the commanding officer to punish summarily a soldier is twofold : first, the power under the Army Act to award detention, deduction from ordinary pay, and in the case of drunkenness a fine not exceeding 10*s*., and, in case of offences committed on active service, field punishment, and forfeiture of pay,

(*a*) Rule 5 (A).
(*b*) Rules 5 (C) and 14 (B). As to use of summary, see note to Rule 8.
(*c*) K.R., para. 487.
(*d*) Rule 17 (A).
(*e*) Rule 17 (E).
(*f*) As to giving notice of the charges to the accused, see below ch. V, para. 32.

Ch. IV.

for not more than 28 days (*a*); and, secondly, the power under the King's Regulations to award the minor punishments of confinement to barracks, or extra guards or piquets, subject and according to the provisions of para. 460, to which reference must be made. The detention must not exceed fourteen days, except in the case of absence without leave exceeding seven days, in which case it may extend to the number of days of absence, not exceeding twenty-one (*b*). Under the terms of the Army Act (s. 46 (2) (*d*)) a non-commissioned officer cannot be awarded field punishment or forfeiture of pay by his commanding officer, and under the King's Regulations a non-commissioned officer is not to be subjected to summary or minor punishments by his commanding officer, but he may be reprimanded or ordered to revert from an acting or lance rank to his permanent grade (*c*), or may be removed from an appointment to his permanent grade, but this power of removal, if the non-commissioned officer's permanent rank is higher than that of corporal, is not to be exercised without reference to superior authority (*d*).

Drunkenness.

32. Drunkenness and absence without leave are the two offences which require to be most frequently dealt with by the commanding officer; indeed, the case of drunkenness of a soldier (not being an offence of drunkenness committed under the special circumstances mentioned in subs. (3) of s. 46 of the Army Act: see ch. iii, para 27) *must* be so dealt with, unless the soldier has elected to be tried by a district court-martial (*e*). This obligation does not apply to a non-commissioned officer charged with drunkenness (*f*).

Absence without leave

33. In the case of absence without leave, the commanding officer may, as already observed, award detention not exceeding twenty-one days; but in determining his award he is to have regard to the number of days of absence, and though he may give 168 hours' detention for absence during any period *not exceeding* seven days, yet it must always be remembered that for absence *exceeding* seven days the term awarded cannot exceed the number of days of absence. For example, suppose Private *A.B.* has been absent without leave, and the commanding officer thinks it expedient to award detention, then the detention may be, if the man has been absent three days, for any number of hours up to 168; if he has been absent eight days, for any number of hours up to 168, or for eight days; if he has been absent eighteen days, for any number of hours up to 168, or any number of days from eight to eighteen (*g*).

Forfeiture of pay.

34. Under s. 138 of the Army Act and the Royal (Pay) Warrant, pay is forfeited, as a matter of course, for every day of absence either on desertion, or without leave; also for every day of imprisonment, detention, or field punishment, under sentence, or in custody under any charge resulting in conviction by a court-martial or civil court, or under a charge of absence without leave, resulting in an award of detention, or field punishment, by his commanding officer; also for every day in hospital on account of sickness, certified to have been caused by an offence committed by him. In the

(*a*) Army Act, ss. 46, 138; K.R., para. 493.
(*b*) Army Act, s. 46 (2) (*a*), (4), (5); Rule 6, and see note.
(*c*) K.R., para. 499.
(*d*) K.R., para. 302.
(*e*) Army Act, s. 46 (3); K.R., paras. 508–513.
(*f*) Army Act, s. 183 (1).
(*g*) In dealing summarily with cases of absence, the commanding officer must take into consideration all the circumstances. K.R., para. 502. As to notifying in Regimental Orders the names of men absent without leave, see para. 503.

case, therefore, of absence without leave, as the pay is forfeited as a matter of course, the officer dealing with the case should make no award, but only inform the soldier of the number of days' pay forfeited (*a*); such a forfeiture can only be remitted under any provisions to that effect which may be contained in the Royal Warrant, or (so far as the Royal Warrant does not provide to the contrary) by the Secretary of State (*b*).

The commanding officer may, where a soldier is not tried by court-martial, order stoppage of his pay to make compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, equipment, military necessaries, and so forth, or by his injuring any buildings or property (*c*); and may likewise order the stoppage of the amount of any fine awarded by himself (*d*).

Right of soldier to demand district court-martial.

35. There is no appeal from the award of the commanding officer, but, as has been already mentioned, the soldier may, in certain cases, instead of submitting to the jurisdiction of his commanding officer, claim to be tried by a district court-martial (*e*).

No trial after punishment by commanding officer.

36. When once an offender has been punished by his commanding officer he cannot be tried by a court-martial for the same offence; and similarly he cannot be punished by his commanding officer or subjected by him to any stoppage of pay for any offence of which he has been acquitted or convicted by a court-martial or by a competent civil court (*f*). When a commanding officer has once awarded punishment for an offence, he cannot afterwards increase it (*g*). It is considered that a commanding officer's award is complete when the man has left his presence.

Delegation of power by commanding officer.

37. A commanding officer will delegate to company, &c., commanders the power of awarding minor punishments not exceeding seven days' confinement to barracks for any offences which he himself may deal with (*h*).

Commanding officer of detachment.

38. The commanding officer of a detachment has, unless restricted by superior authority, the same power of awarding summary punishment as the commanding officer of a corps (*i*).

(iv) *Provost-Marshal.*

Provost-marshal.

39. In case of offences committed abroad, whether on active service or not, arrests will often be made by the provost-marshal or his assistants, who may be appointed by a general officer commanding a body of forces abroad. A provost-marshal cannot, as was formerly the case, inflict any punishment of his own authority (*k*). He can only arrest and detain for trial persons

(*a*) K.R., para. 495.

(*b*) Army Act, ss. 138, 139; Pay Warrant, art. 902. Absence as a prisoner of war no longer involves forfeiture of pay, unless a court of enquiry (K.R. 675) subsequently find that the soldier was taken prisoner through his own fault or misconduct; and even so, the forfeiture only attaches to any balance of pay unissued: (Pay Warrant, art. 954).

(*c*) Army Act, s. 138 (4).

(*d*) Army Act, s. 138 (7).

(*e*) Army Act, s. 46 (8); above, para. 20.

(*f*) Army Act, s. 46 (7).

(*g*) Rule 6 (B). As to the power of the Army Council or officer not below the rank of brigadier-general to cancel an award, or reduce the punishment, see K.R., para. 507.

(*h*) K.R., para. 484, 501.

(*i*) K.R., paras. 456, 457, and see para. 458.

(*k*) The provost-marshal was, until 1829, appointed by the general, and exercised his powers without any statutory authority, and the appointment could only be justified legally as being made under the Sovereign's prerogative to govern the army in time of war in places out of his dominions. There must have been considerable doubt as to the existence of the power, and consequently as to the legality of the provost-marshal's acts, and a correspondence took place between the Duke of Wellington and the Government on the subject during the Peninsular War. (See

Ch. IV.

subject to military law committing offences, and carry into execution punishments to be inflicted in pursuance of a court-martial. A provost-marshal and his assistants have also as respects a soldier in his or their custody undergoing field punishment, the same powers as the governor of a military prison (*a*).

(v.) *Discipline on Board H.M.'s Ships.*

Discipline on board H.M.'s ships.

40. The discipline of troops embarked as passengers on board any of His Majesty's ships is regulated by an Order in Council of 6 February, 1882 (*b*).

Clode, Mil. Forces, ii. p. 662.) In 1829 the Article of War respecting the provost-marshal was inserted, and gave legal recognition and—if it was within the powers of the Articles—legal sanction to the appointment and powers of the provost-marshal. (See Clode, Military and Martial Law, pp. 181-3.) The above powers were curtailed in 1879 by the Act of that year. For appointment and duties, see K.R., para. 599.

(*a*) Army Act, s. 74, as amended by the Army (Annual) Act, 1907, s. 10. As to garrison and regimental provost-serjeants, see K.R. 661, 664.

(*b*) *See* the Order in Council printed below, p. 605.

CHAPTER V.

COURTS-MARTIAL.

i. *Constitution and Jurisdiction.*

Three descriptions of court-martial.

1. The descriptions of court-martial before which a person charged with an offence too serious to be disposed of summarily by the commanding officer can ordinarily be brought, are three (*a*)—

(1.) The regimental court-martial;
(2.) The district court-martial; and
(3.) The general court-martial.

None of these tribunals has power to try any person unless he is subject to military law as provided by the Army Act (*b*). But each of them has under the Army Act complete jurisdiction to try any military offence whatever committed by a person so subject to military law; the difference between their powers consisting, in the extent of punishment which each tribunal can award, and in the incapacity of the inferior tribunals to try officers and persons in the position of officers.

Powers of regimental court.

2. Thus, a regimental court-martial cannot award a heavier punishment than forty-two days' detention, and cannot discharge a soldier with ignominy; nor can it try an officer or a warrant officer, or a person subject to military law, but not belonging to His Majesty's forces (*c*).

Of district court.

3. A district court-martial cannot award any punishment higher than two years' imprisonment; and cannot sentence a warrant officer to any punishment except forfeitures, &c., and either in addition to or instead of forfeitures, &c., dismissal, or such reduction as is mentioned in s. 182 of the Army Act, and cannot try an officer (*d*).

Of general court.

4. A general court-martial alone can award the punishments of penal servitude and death, and can try an officer.

Jurisdiction in respect of certain offenders.

5. A person who since the time at which an offence is alleged to have been committed by him has ceased to be subject to military law, may nevertheless be tried and punished by a court-martial for his offence; but except in the case of mutiny, desertion, or fraudulent enlistment, he can only be tried within three months after he ceased to be subject to military law (*e*); but militia and reservemen can in the case of certain offences be tried within two months after their apprehension (*f*). A court-martial has no jurisdiction to try a person for any offence of which he has been already acquitted or convicted by a court-martial or by a competent civil court (*g*); but this does not apply where there has been no regular

(*a*) As to field general court-martial, see below, paras. 24–26.
(*b*) Army Act. ss. 175, 176; see also *Introductory Observations* to Part V of the Army Act.
(*c*) Army Act, s. 47 (5); s. 182 (1); s. 184 (1). A non-commissioned officer above the rank of corporal is not ordinarily to be tried by a regimental court. K.R., para. 438.
(*d*) Army Act, s, 48 (6).
(*e*) Army Act, s. 158 (1).
(*f*) Reserve Forces Act, 1882, s. 26; Militia Act, 1882, s. 43.
(*g*) Army Act, ss. 157, 162 (6), and note.

Ch. V.

trial resulting in an acquittal or conviction or in the case of a conviction by a court-martial which has not been duly confirmed (*a*). But although as a general principle non-confirmation of a conviction by a court-martial enables a man to be tried again, it is obvious that this course should only be exceptionally adopted, as, *e.g.*, if the plea of a soldier charged with desertion is, that he was guilty, but intended to return, and this plea has been recorded as guilty, although amounting to a plea of not guilty. The cases where such a course is more particularly applicable are mentioned in the Act (see ss. 53, 54 (6), 157), and the Rules (see 56 (B) 57, 66 (B), 100).

Further observations on jurisdiction.

6. An offence, other than mutiny, desertion, or fraudulent enlistment, cannot be tried by court-martial if three years have elapsed since the date of its commission (*b*), but a partial exception from this is made, as stated in para. 5, for militia and reserve men. An offence, wherever committed, may be tried and punished at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the alleged offender may for the time being be, and the trial will take place as if the offender were under the command of such officer (*c*). Offences committed on board ship can be tried on board before reaching the port of disembarkation, as if committed on land at the place where the offender embarked, but no court-martial is ever held on board one of His Majesty's ships, except a regimental court-martial for trying a non-commissioned officer (*d*).

Composition of courts.

7. Closely connected with the difference between courts-martial as regards their power of punishment is the difference as regards their composition, in that the inferior courts-martial consist of fewer members, and may be composed of officers of lower rank.

Legal minimum.

8. Thus the legal minimum number of members on a regimental court-martial, and on a district court-martial, is three; while on a general court-martial in the United Kingdom, India, Malta, and Gibraltar it is nine, and elsewhere five (*e*).

Composition of regimental court.

9. The members of a regimental court are not required to be (*f*), but will as a rule all be, officers of the unit to which the accused belongs, or attached to it, except where detachments of several corps are serving together—on the march, for example, or on board ship. Every member of a regimental court must have held a commission for a year (*g*).

Of district court.

10. A district court-martial must consist, so far as seems practicable, of officers of different corps, and can only be composed exclusively of officers of the same regiment of cavalry or battalion

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(*a*) Rule 66 (B); Army Act, ss. 53 (4), 54 (6).

(*b*) Army Act, s. 161. When a soldier has served in a corps for three years in an exemplary manner, he cannot be tried for fraudulent enlistment or for desertion (other than desertion on active service) committed before the commencement of such three years (s. 161). If a soldier has served for three years without an entry in the regimental conduct sheet, he is to be considered as having earned exemption under the above enactment; K.R., para. 489.

(*c*) Army Act, ss. 159, 160.

(*d*) Army Act, s. 188; Naval Discipline Act, s. 88. As to discipline of troops on board H.M.'s ships, see Order in Council below, p. 596, para. 7.

(*e*) See Army Act, ss. 47, 48, Rule 18, and note; and as to the number to be detailed in ordinary cases, and waiting members, K.R., para. 576. For doubtful or complicated cases, a district court should usually consist of five members, *ib.* Where the minimum number is detailed for a court-martial not more than one member should be a subaltern, *ib.*

(*f*) Army Act, s. 50 (1).

(*g*) Army Act, s. 47 (2) (see note), Rule 19 (C).

of infantry, if other officers are not available (*a*). Every member of a district court must have held a commission for two years (*b*).

Of general court.

11. A general court-martial must also consist, so far as seems practicable, of officers of different corps, and can only be composed exclusively of officers of the same regiment or battalion if other officers are not available (*a*). Every member of a general court-martial must have held a commission for three years, and if the court is to try a field officer, must not be under the rank of captain. The Army Act further provides that no less than five members must be of a rank not below that of captain; and Rule 21 requires the members of a court-martial for the trial of an officer to be of equal, if not superior, rank to that officer, unless officers of such rank are not available. For the trial of a commanding officer of a unit, as many members as possible must hold, or have held, commands equivalent to that held by the accused (*c*).

Trial of members of auxiliary forces.

12. In the case of the trial of an offender belonging to the auxiliary forces, one member of the court is, if practicable, to belong to those forces, and to the same branch as that to which the accused belongs (*d*).

General provisions

13. In all cases the members of a court must be themselves subject to military law, and must not be personally interested in any manner in the case to be tried by them. Nor can an officer sit on a court-martial if he is the convening officer, or the prosecutor, or a witness for the prosecution, or if he investigated the charges (this will include the company, &c., commander who made the preliminary investigation and the officer who takes the summary of evidence), or was member of a court of inquiry respecting the matters on which the charges are founded, or if he is the commanding officer of the accused, or of his corps or battalion (*e*).

President.

14. The president of a court-martial must always be appointed by the convening officer (*f*). The other officers may be either appointed or detailed by the convening officer, and if detailed may be appointed by the proper officer according to the custom of the service. The president of a court-martial should be not below the rank, in the case of a regimental court, of captain; and in the case of a district or general court, of a field officer; but may in exceptional circumstances be of a lower rank (*g*). In the case of a general court-martial, if a general officer or colonel is available, an officer of inferior rank is not to be appointed (*h*). Honorary rank does not entitle an officer to the presidency of a court-martial (*i*), but he is legally qualified if duly appointed. In practice a combatant officer is always appointed, except in the case of regimental courts-martial in the Royal Army Medical Corps, in which case an officer of that corps is appointed.

Remarks on trial of offences by different courts.

15. The object of the regimental court-martial is to try offences which, though not of a very serious nature, appear, from the character of the offender or otherwise, to require severer punishment than the commanding officer can award; or which, for some special reason, he may deem it inexpedient to deal with himself. As,

(*a*) Rule 20 (A), and note.
(*b*) Army Act, s. 48 (4), Rule 19 (C).
(*c*) Rules 19 (C), 20 (A), and 21; Army Act, s. 48 (3); K.R., para. 578 (ii).
(*d*) Rule 20 (B).
(*e*) Army Act, s. 50, Rule 19 (B). See also notes to that section and that rule as to investigating officer and personal interest. A member of a court cannot act as confirming officer for that court, Army Act, s. 54 (4).
(*f*) Army Act, s. 47 (3).
(*g*) On trial of a warrant officer the president must not be under the rank of a captain; Army Act, s. 182 (4).
(*h*) Army Act, s. 47 (4), and s. 48 (9); K.R., para. 578.
(*i*) K.R., para. 229.

Ch. V.

however, commanding officers can now award 14 days' detention, many offences will be dealt with summarily which formerly would have been sent before a regimental court. The powers of district courts-martial are sufficient to deal with all ordinary offences committed by non-commissioned officers and soldiers; and the King's Regulations direct that the higher tribunal of a general court-martial is only to be resorted to in cases of very aggravated offences (*a*).

Convening officer.

16. The descriptions of courts-martial further differ as regards the officers who can convene them.

Of regimental court.

17. A regimental court-martial can be convened by a commanding officer (as defined by Rule 129) if not below the rank of captain; also by an officer not below the rank of captain when in command of two or more corps, or portions of two or more corps, and on board a ship by a commanding officer of any rank. It may thus be convened, not merely by the commanding officer of a regiment or detachment, but by an officer *de facto* commanding detachments of several regiments, however temporary his command may be, if he has, by the custom of the service, authority to tell off the offenders belonging to those detachments. A regimental court-martial can also be convened by an officer who is authorised to convene a general or district court-martial; but he should order the commanding officer (above described) to convene it, unless that officer is unable to form an adequate court from the officers under his command (*b*).

Of district court.

18. A district court-martial can be convened by an officer authorised to convene a general court-martial, or by an officer who has received from such officer a warrant authorising him to convene district courts-martial (*c*).

Of general court.

19. A general court-martial can be convened by direct warrant from His Majesty, or by an officer authorised by His Majesty to convene such courts, or by an officer holding a warrant to convene such courts from some officer authorised to delegate the power of convening them (*d*).

Warrants for convening in U.K.

20. At home warrants giving officers power to convene general courts-martial are usually issued by the King to the general officers commanding in chief a command, to the general officer commanding the London district, to the general officers commanding in Guernsey and Jersey, and to the commandants of the School of Gunnery and of the Royal Military College.

In India and elsewhere out of U.K.

21. In India a warrant giving power to convene and to confirm the findings and sentences of general courts-martial is usually issued to the Commander-in-Chief in India, and elsewhere out of the United Kingdom to the general officer commanding, either in the colonies or on active service.

Contents of warrants.

22. Any such warrant, and also any warrant of delegation given by the officer so authorised, may contain any reservations or special provisions, and may be addressed to an officer by name, or by the designation of his office; and may give authority to a person performing the duties of an office named, or to the successors in command of an officer; and may be wholly or partly revoked by a fresh warrant (*e*).

(*a*) K.R., para. 552.
(*b*) Army Act, s. 47 (1); K.R., para. 559.
(*c*) Army Act, ss. 48 (2), 123.
(*d*) Army Act, ss. 48 (1), 122.
(*e*) Army Act, ss. 122 (3), (4), 123 (3). For forms of warrants, see p. 599; and as to the ordinary practice in issuing warrants, see below, paras. 94, 95.

Powers under warrant for convening general courts-martial.

23. Every general officer authorised, whether immediately by warrant from the King or mediately by delegation, to convene a general court-martial has by virtue of the Act power to convene either a district or regimental court-martial, and also to empower another officer to convene district courts-martial, and the latter officer, by virtue of this power, will be able to convene a regimental court-martial. Such general officer should, however, as above mentioned, only convene a regimental court himself, where circumstances render that course desirable (*a*).

Field general court-martial.

24. The foregoing remarks have left out of notice a court-martial of an exceptional kind, termed a field general court-martial. This court has the same power as a general court-martial, including the power of trying an officer, but is convened in an exceptional way (no warrant being required), and is subject to exceptional rules, under which the procedure is of a more summary character than that of an ordinary court-martial (*b*).

Object of field general court.

25. A field general court-martial can only be convened on active service or abroad for the trial of offences which it is not practicable, with due regard to the public service, to try by an ordinary general court-martial. If troops are not on active service, the power of convening it is further limited to cases of offences committed by persons under the command of the convening officer and of offences against the person or property of some inhabitant of, or resident in, the country (*c*).

Constitution and powers.

26. A field general court-martial must consist of not less than three officers, unless the convening officer is of opinion that three are not available, in which case it may consist of two; but in the latter case it cannot award any sentence exceeding imprisonment or field punishment. A sentence of death requires the concurrence of all the members (*d*).

(ii.) *Procedure.*

Application for court-martial by commanding officer.

27. When a commanding officer remands an accused person for trial by court-martial he must immediately take steps for the assembly of the court, and, unless for some special reason, must do so within 36 hours. If he decides on a regimental court, he will issue his order for convening it; in any other case he will send to superior authority an application for a district or general court-martial, accompanied by the summary of evidence, the charges on which he proposes the accused person should be tried, and other documents, and in his letter of application he will state his reasons for desiring the particular description of court for which he applies (*e*). A reference to superior authority must similarly be made without delay. In deciding on the line of action he will take, the commanding officer will be governed by the directions given in the King's Regulations (*f*).

Duty of convening officer in considering application for court-martial.

28. An officer receiving an application to convene a district or general court-martial must consider the nature of the case, the statutory provisions, and the regulations applicable to it, and

(*a*) See above para. 17, and K.R., para. 559, which applies also if the offender belongs to a special corps or department.

(*b*) See s. 49, and notes; and as to the procedure of field general court-martial, Rules 105–123.

(*c*) As to convening officer, see s. 49 and Rule 105.

(*d*) S. 49 (1) (2).

(*e*) See also Memoranda for Guidance of Courts-Martial, p. 582, and Form of Application for a Court-Martial, p. 604.

(*f*) Rules 4 (B) and 5 (A); K.R., paras. 487–492.

Ch. V.

subject thereto, must use his discretion as to the mode of disposing of the application. He must satisfy himself that the charge is for an offence under the Army Act, and properly framed in accordance with the Rules and King's Regulations, and that the evidence justifies the trial of the accused (*a*). If he thinks it does not, he should order the accused to be released; if he doubts, he can order the release or refer the case to superior authority. If he thinks it should be disposed of summarily or by regimental court-martial, he should give directions to that effect. If he thinks it should be tried by a district or general court-martial, he will either convene such a court, or apply for such a court to be convened.

Power to refer to superior authority.

29. He is at liberty to refer to superior authority in any case of difficulty, and he will be bound to refer, if the case is one directed by order or regulation to be referred to an officer having power to convene a particular description of court. When a soldier is to be arraigned on a serious charge, charges for any minor offence may be dropped if the convening officer thinks proper (*b*).

Considerations to be borne in mind by convening officer.

30. In forming his decision the convening officer will give due weight to the prevalence of the particular offence charged, to the general state of discipline in the corps or district, the character of the individual, and to all the different circumstances which may render it expedient at one time to try an offence by a district court-martial, and at another time to take a more serious view of it (*c*). A case should not, as a rule, be sent for trial unless there is reasonable probability that the accused person will be convicted; at the same time there may be cases where disgraceful charges have been preferred, and where a court-martial affords the only means to the accused of decisively clearing his character. In any event, members of courts-martial should not allow the fact of a case being sent for trial, or the fact of a particular description of court-martial having been selected, in any degree to influence their estimate of the evidence.

Removal of offender for trial.

31. It is directed by the King's Regulations that offenders are not to be sent home from stations abroad with charges pending against them, except in cases of necessity. But for the sake of convenience a person charged may be removed for trial from the place where he is serving, so long as he is not prejudiced in his defence by the change (*d*).

Notice to accused of charges, &c.

32. The convening officer having settled the charges on which the accused is to be tried, should take steps for having them communicated to the accused. The officer communicating the charges to the accused should always inquire whether he understands them, and if not should fully explain them to him. A copy of the charge sheet must always be given, except when, on active service, it is impracticable. The accused should, if he desires it, be informed of the officers by whom he is to be tried, as soon as they are named; and if he is to be tried together with other persons, he should always have notice given to him, so as to enable him to object on the ground that the evidence of the other persons is material for his defence. Reasonable steps are to be taken for procuring the attendance of any witnesses whom the accused desires to call (*e*). A person charged is not entitled to any list

(*a*) Rule 17 (A), and note; K.R., para. 567.
(*b*) K.R., paras. 548–551, 567, 568.
(*c*) K.R., para. 552.
(*d*) K.R., paras. 569, 570.
(*e*) Rules 14, 15, 78.

of witnesses for the prosecution, neither is he bound to give the prosecutor a list of his own witnesses (*a*).

Accused to have opportunity of preparing defence.

33. The accused is to have proper opportunity to prepare his defence, and liberty to communicate with his witnesses and legal adviser, or other friend. This liberty is subject to the limitation that such persons are available, as the object of the rule is to give the accused full opportunity to prepare his defence, but not to enable him to postpone his trial (*b*).

Assembly of court.

34. When a court-martial assembles at the time and place named in the order, the members will take their seats according to their rank (*c*). If a judge advocate has been appointed, he must be present. The court is considered to be open, and the accused may be, but need not be, present during the preliminary proceedings. The charges and summary of evidence in the case of all the persons charged, if more than one, will be produced by the president.

Hours of sitting.

35. The hours of sitting will usually be, in the United Kingdom, between 10 a.m. and 4 p.m, or 11 a.m. and 5 p.m.; elsewhere they will be regulated by general officers commanding, but a court should never sit more than eight hours during one day (*d*).

Proceedings before commencement of trial.

36. The first duty of the court will be to read the order convening the court. This order will appoint the president, and detail or appoint the officers; and will notify the judge advocate appointed. If the order appears on the face of it to be proper, the court will have complied with Rule 22 (A) (i), requiring them to ascertain that the court has been convened in accordance with the Army Act and Rules.

Eligibility and freedom from disqualification of members of court.

37. The court will then proceed to ascertain that the proper number of officers is present, and that each of those officers is capable of serving; that is to say, is eligible and not disqualified to serve on the court-martial, and is of the rank required by the order convening the court (*e*). The eligibility of an officer depends on his status as an officer, that is, on his being subject to military law, and having held a commission for the required period (*f*). Disqualification is a personal question, and depends on his being, or having been, in any manner a party to the case (*g*). The corps to which officers belong, or their rank, is a matter merely for the convening officer, except that the court should ascertain that the provisions of Rules 20 and 21 are observed, and on the trial of a field officer, that none of the officers are under the rank of captain (*h*). If any officer appears not capable of serving he will retire, and one of the officers in waiting will be directed to serve in his stead, and his capacity of serving must be considered in the same manner. It will usually be convenient, where there are officers in waiting, to consider their capacity to serve before proceeding further.

Of president. Of judge advocate.

38. The court will also ascertain that the president is of proper rank as required by the Army Act (*i*), and that the judge advocate is not disqualified (*j*).

(*a*) Rule 77.
(*b*) Rule 13.
(*c*) Rule 58.
(*d*) K.R., para. 579. Rule 64.
(*e*) Rule 22 (A) (ii) and (iii); see above, paras. 9–11.
(*f*) Army Act, ss. 47 (2), 48 (3) (4); Rule 19 (A) and (C).
(*g*) Army Act. s. 50 (2) (3); Rule 19 (B).
(*h*) Army Act, s. 48 (7). See also Rules 21 and 22.
(*i*) Army Act, ss. 47 (4), 48 (9), 182 (4).
(*j*) Army Act, s. 50 (3); Rules 22 (B), 101 (B).

Ch. V.

Adjournment if court not properly constituted, or accused not properly charged.

39. If at any stage of the above proceedings the court are not satisfied on any point, or the president appears to be ineligible disqualified, or not of proper rank, or if officers by being found to be ineligible or disqualified are obliged to retire so as to reduce the number below the detailed number, the court in some cases must adjourn, and in others will find it expedient to adjourn, for the purpose of consulting the convening authority. Where, however, the number of officers is not reduced below the legal minimum, and the court consider that in the interests of justice and of the service it is inexpedient to adjourn, they can proceed, but must record their reasons (*a*).

Amenability of accused to jurisdiction.

40. The court, having ascertained the validity of their constitution, will then consider whether the accused to be tried is amenable to their jurisdiction and whether the charge is properly framed; if not satisfied the court should adjourn and report to the convening authority (*b*).

Prosecutor may be present.

41. As the court is an open court, the prosecutor may be present during the above proceedings, and may be consulted by the court; but he has no status before the court until after those proceedings are concluded.

Conclusion of preliminary proceedings.

42. On the conclusion of the above preliminary proceedings the prosecutor will assume his position as prosecutor, being required then to take his seat, and the accused, if not previously present, will be brought before the court. The accused, if an officer, will be in the custody of an officer; if a non-commissioned officer, in the custody of a non-commissioned officer; and if a private, in the custody of an escort. If necessary, an escort may be employed in any case (*c*).

Seat for accused, when allowed.

43. The accused is allowed a seat as a matter of course in the case of an officer, and in any other case when the court think proper. Accommodation is to be afforded, on the application of the accused, for his friend or counsel.

Objections by accused to members of court.

44. The accused will then be asked whether he objects to be tried by the president or any of the officers appointed to form the court. If he does so object, he will be asked to name all the officers to whom he objects. If the objections are more than one, each objection will be taken in succession, that to the junior officer in rank being taken first, except that an objection to the president must be disposed of before any other objection. The accused will be asked to state the grounds of his objection, and those grounds will be submitted to the other officers, even though some of them may have been objected to, and will be decided by them (*d*). If the objection to an ordinary member is allowed the officer will retire and one of the officers in waiting will be ordered to serve, subject to a similar right of objection by the accused. If the objection to the president is allowed, the court must adjourn. The mode of inquiring into and disposing of objections is detailed in Rules 25 and 71 (A) (B). An objection to the president must be allowed if one-third of the members are in favour of allowing it (*e*); objections to other officers must be allowed if allowed by one-half (*f*).

(*a*) Rules 18 (A), 22 (C). (*b*) Rule 23.

(*c*) Rule 24; K.R., para. 580. If the prosecution is instituted at the instance of a civilian, that civilian may be in court and assist the prosecutor, but he cannot speak or take part himself in the prosecution, except as a witness, as (subject to the rule as to counsel), the prosecutor must under this Rule be in every case subject to military law, though, of course, this requirement does not extend to counsel appearing for the prosecution.

(*d*) Rule 25 (D.)

(*e*) Army Act, s. 51 (3). (*f*) Army Act, s. 51 (5).

Procedure if objections allowed.

45. If the officers are by reason of the objections being allowed reduced in number below the legal minimum, the court must adjourn for the appointment of fresh members. If the court is reduced in consequence of objections below the number detailed, but not below the legal minimum, and the majority of the members think that in the interests of justice and for the good of the service it is inexpedient to adjourn, they can record their reasons and proceed with the trial, but otherwise they should adjourn for the appointment of fresh members (*a*). On the appointment of a new president or of fresh members, the like procedure must be followed. Upon any such adjournment of the court the convening officer can, if he pleases, convene a new court, as the trial of the accused is not considered to begin until the court are sworn (*b*).

Swearing of members.

46. After the disposal of any objections made by the accused the court will be sworn, if there is a judge advocate, by the judge advocate, and if not, by the president, the president being sworn by some member of the court who has been previously sworn. The form of oath is prescribed by the Army Act (*c*).

Of judge advocate and officers attending for instruction.

Of shorthand writer and interpreter.

47. After the members of the court are sworn the judge advocate and officers attending for the purpose of instruction will be sworn, and if it is intended to employ a shorthand writer or interpreter, he must be sworn also; but a shorthand writer or interpreter may be sworn at any stage of the proceedings (*d*). The accused cannot object to a judge advocate, but has a right to object to a person proposed to be sworn as interpreter or shorthand writer on the ground that he is not impartial (*e*). The president will therefore inform the accused of the person intended to be sworn and ask him if he objects, and if so, on what ground. In certain cases a solemn declaration to the same effect as an oath may be substituted for the oath (*f*).

Court may be sworn to try several offenders.

48. Where several offenders are to be tried, whether together or separately, the members of the court may be sworn at the same time to try all of them, but each person charged must be present, and asked separately if he objects to any member. One case will be taken first, and the others will be taken afterwards in succession (*g*).

Arraignment of accused.

49. As soon as the members and other persons are sworn, the accused will be arraigned. Arraignment consists in the judge advocate, or, if there is none, the president or some member of the court, reading each charge to the accused and asking him if he is guilty or not guilty of the charge. This will be done with each charge in a charge sheet (*h*). If the charges against the accused are contained in more than one charge sheet, the arraignment as well as the prosecution, defence, and finding, in the case of each charge sheet, must be kept separate (*i*).

Claim of accused persons to be tried separately.

50. Where several persons are charged with an offence committed collectively, any one of them may on his arraignment (if he has not done so before by notice to the convening authority) claim to be tried separately, on the ground that the evidence of some one or more of the other persons charged will be material to his defence. The court, if satisfied that the evidence will be material, must

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(*a*) Rules 25, 18.
(*b*) Rule 18 (B).
(*c*) Army Act, s. 52 (1).
(*d*) Rules 27, 72.
(*e*) Rules 25 (B), 72 (C).
(*f*) Army Act, s. 52 (4); Rule 28.
(*g*) Rule 71.
(*h*) Rule 31.
(*i*) Rule 62.

Ch. V.

allow the claim, unless the nature of the charge—as might be the case (for example) in a charge of mutiny—does not admit of its allowance (*a*).

Objection by accused to charge before plea.

51. The accused before he pleads to a charge may object to its validity, and the court must either overrule the objection, or, if they think it valid, adjourn for the purpose of obtaining an amendment of the charge from the convening officer. A mere mistake, however, in the name or description of the accused may always be corrected by the court (*b*).

Plea to jurisdiction of court.

52. The accused may also offer a plea to the general jurisdiction of the court and give evidence in support of that plea. The court will decide this question of jurisdiction in the same manner as any other question. If the plea be overruled, the court will proceed with the trial; if it be allowed, the court must record its decision and reasons, report to the convening officer, and adjourn. If there is any doubt, the court may refer to the convening officer, or record a special decision and proceed with the trial (*c*).

Plea in bar.

53. A plea in bar of trial may also be offered by the accused, at the time of his general plea of "guilty" or "not guilty," on the ground that he has already been convicted or acquitted by a civil court or by a court-martial, or has been dealt with summarily by his commanding officer for the offence, or that the offence has been pardoned or condoned, or was committed more than three years ago, or, in the case of certain civil offences, not within the shorter period allowed for commencing proceedings. The plea must be recorded as well as the general plea of the accused, and may be supported by evidence. If the court find the plea not proven, they will proceed with the trial; if they find it proven, they will notify their finding to the confirming authority and adjourn, unless there is some other charge against the accused not affected by the plea. In either case, the finding requires confirmation (*d*).

Plea of "guilty."

54. If the accused pleads guilty, the president should, before the plea is recorded, explain the charge to him so as to prevent his pleading guilty in consequence of ignorance of the exact nature of the charge or of the effect of the plea; and should also point out to him that with a plea of guilty there will be no regular trial, but merely a consideration of the proper amount of punishment, that he can only make a statement in mitigation of punishment, and call witnesses as to character, and that if he wishes to *prove* extenuating circumstances, or indeed to make any kind of defence whatever, he should plead not guilty (*e*).

Procedure on plea of "guilty."

55. If the accused, nevertheless, determines to plead guilty, the court will find him guilty, and will then proceed, after hearing any statement he desires to make, to read the summary or abstract of evidence, and annex it to the proceedings. If there is no summary or abstract (*f*), the court must take and record sufficient evidence to enable them to determine the sentence. The accused may then make a statement in mitigation of punishment, and the court may allow witnesses to be called in support of that statement. The accused may then call witnesses as to character. Should it

(*a*) Rule 15. This rule is not affected by the right of the accused to give evidence. For though each person charged can, if he likes, give evidence, none of the others can compel him to do so.
(*b*) Rules 32, 33.
(*c*) Rule 34.
(*d*) Rule 36.
(*e*) Rules 35 and 37, and see notes to those Rules.
(*f*) There will be a summary of evidence in the case of regimental as well as in the case of general and district courts-martial.

appear to the court that the accused did not understand the effect of his plea of "Guilty," it will be their duty to enter a plea of "Not guilty," and to proceed with the trial (*a*).

Refusal to plead, &c.

56. Where the accused refuses to plead, or pleads unintelligibly, a plea of not guilty must be recorded (*b*). A plea of not guilty can be withdrawn by the accused at any time during the trial, and in such case the procedure is substantially the same as in the case of an original plea of guilty (*c*).

Plea of "not guilty."

57. On a plea of not guilty, the prosecutor will, if the case is complicated, make an opening address, giving an outline of the evidence he intends to call, but abstaining from any argument and comments not required to explain the nature of the case. The duty of the prosecutor is fully laid down and explained in Rules 39 and 60, and the notes thereto ; and it is only necessary here to observe generally that the prosecutor is an officer of justice, whose first duty is to ascertain the truth—not to obtain a conviction independently of the truth ; and that he is bound to act with scrupulous candour and fairness towards the accused and the court, and to conduct the case throughout in a fair and moderate spirit. Any deviation from the above line of conduct will be at once checked by the court (*d*).

Duty of prosecutor.

Examination of witnesses for prosecution.

58. On the conclusion of his address, the prosecutor will call the evidence for the prosecution. The accused is at liberty to cross-examine the witnesses, and the prosecutor may then re-examine them on matters raised by the cross-examination (*e*).

Defence of accused.

59. At the close of the case for the prosecution, the accused will be called on for his defence. The course of procedure on the defence differs according to whether the accused does or does not call witnesses to the facts of the case other than himself.

The procedure when he does not call any such witnesses (*i.e.*, witnesses to the facts other than himself) is the same as when he calls no witnesses at all. In this case the accused, if he wishes to do so, will give evidence as a witness, and may be cross-examined by the prosecutor, subject to the privileges mentioned in Chapter VI. para. 93. At the close of the evidence of the accused, or, if the accused has not given evidence, immediately on the close of the case for the prosecution, the prosecutor may sum up the case for the prosecution, and may comment on the evidence of the accused, if any, but he must not comment on the fact that the accused has not given evidence himself. The accused may then make an address in his defence, and call his witnesses (if any) as to character ; and the judge advocate (if any) will then sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding.

Procedure if accused calls witnesses other than witnesses to character.

60. If, on the other hand, the accused calls witnesses to the facts of the case other than himself, he may make an opening address ; he will then call his witnesses (including himself if he wishes to give evidence), who may be cross-examined by the prosecutor and re-examined by the accused. The accused may then sum up his case in a second address, and the prosecutor may reply. After the reply of the prosecutor, the judge advocate (if any) will

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(*a*) Rule 37.
(*b*) Rule 35 (A). As to procedure where a plea of guilty is recorded to one or more of the charges in a charge sheet, and a plea of not guilty to others, see Rule 37 (A).
(*c*) Rule 38.
(*d*) See Rule 60, and note.
(*e*) Rule 84 ; see Rule 39, and note.

Ch. V.

sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding (*a*). In exceptional cases witnesses in reply may be called for the prosecution before the second address of the accused (*b*).

If a person defended by counsel or by an officer exercises his right of making a statement (a right which he enjoys if he does not give evidence himself), the procedure will be, as far as possible, the same as if he had called witnesses to the facts of the case (*c*).

Latitude allowed in defence.

61. The accused is to be allowed great latitude in making his defence, and will not, within reasonable limits, be stopped by the court merely for making irrelevant observations (*d*). The court must never forget that the principle of English law is, that an accused person is presumed to be innocent until proved to be guilty, and that, although there are cases where the prosecution may, by proving certain facts, raise a presumption of guilt which the accused must rebut, yet, generally speaking, the burden of proof lies on the prosecution, and any doubt as to the sufficiency of proof must be decided in favour of the accused. Nor must it be forgotten that the right now enjoyed by the accused of giving evidence himself has not shifted the burden of proof. It is no more possible than formerly for the prosecution to rely on mere *primâ facie* evidence of guilt, on the ground that were it not true the accused could go into the box and contradict it.

Court not to be influenced by supposed intention of convening officer.

62. The court, in considering their decision, should not allow themselves to be influenced by the consideration of any supposed intention of the convening officer in sending the case for trial. It may be very right to send for trial a person who, when tried, ought to be acquitted, and therefore an acquittal is not in itself a reflection on the convening officer. Even if it were, it would be no reason whatever for a court to convict, unless the evidence established the charge to their satisfaction.

Friend of accused.

63. The accused is allowed to have a friend to assist him, who may be either a legal adviser or any other person. If the friend is not a barrister, a solicitor, or an officer subject to military law, he can only advise the accused and suggest questions to be put by the accused to witnesses; but if he is a barrister, a solicitor, or an officer subject to military law, he has the rights and duties of counsel under the Rules (*e*).

Counsel.

64. Formerly counsel, though they could appear as advisers either of the prosecution or of the defence, could not address the court or examine witnesses orally. But now, by Rules 88–94, counsel who appear on behalf of either prosecutor or accused, have the same rights as to addressing the court, examining witnesses, and generally, as the persons whom they represent. A person defended by counsel or by an officer may, however, if he does not give evidence himself, make a statement, giving his own account of the subject of the charges, but cannot be sworn or cross-examined on it (*f*). The rights and conduct of counsel are regulated by the above-mentioned Rules, and by the Army Act, which provides a mode of enforcing the provisions of the Rules and due respect for the court (*g*).

(*a*) Rules 40–42.
(*b*) Rule 86 (B). As to the evidence of the accused himself, see Rule 80.
(*c*) Rule 94. The forms in Appendix II provide for every possible contingency.
(*d*) Rule 60 (C).
(*e*) Rules 87, 93 (B).
(*f*) Rule 91.
(*g*) Army Act, s. 129.

Examination of witnesses.

65. Every witness, whether for the prosecution or defence, is required either to be sworn or to make a solemn declaration (*a*). All questions are to be put to the witness direct by the prosecutor, accused, or judge advocate (*b*). If any improper question is addressed to the witness, the prosecutor, or accused, or judge advocate, or a member of the court, should object to the question before the witness answers it, and the objection will be disposed of before the witness answers (*c*). During the discussion on any such objection the witness may be ordered to withdraw. When not under examination, witnesses should not, as a rule, be allowed to be in court (*d*).

Evidence to be read over to witnesses.

66. The evidence of every witness is to be read over to him before he leaves the court, and he may offer, or be called on by the court, to explain or to reconcile answers which may appear inconsistent. The explanation can be entered on the proceedings, only as an addition to the evidence previously recorded, and any discrepancy must, for the sake of justice and for the information of the officer whose duty it is to confirm the sentence, still appear, although the apparent contradictions may have been satisfactorily explained. Each party is allowed to question the witness as to such explanation (*e*).

Recalling witnesses.

67. At the request of the prosecutor or accused, a witness may be recalled by leave of the court at any time before the time for the second address of the accused. And where the witnesses for the accused have introduced new matter which the prosecutor could not reasonably have foreseen, he can, with the leave of the court, call or recall a witness to give rebutting testimony. The court can call or recall a witness at any time before the finding, but they should exercise this power with caution; and if they do exercise it, they should put to the witness any question which they are requested by the prosecutor or accused to put, unless they consider the question irrelevant (*f*). The court can also at any time put questions to witnesses; and should ordinarily put any question which the prosecutor or accused requests to be put after the conclusion of the re-examination or cross-examination (*g*). The court can also, in exceptional cases, themselves call witnesses who have not been called by either side (*h*).

Expenses of witnesses.

68. The allowances for the expenses of both military and civilian witnesses in attending courts-martial are regulated by the Army Allowance Regulations, to which reference must be made (*i*).

Interpreter.

69. In India, if an interpreter be required, a qualified military officer is usually appointed. In the colonies, courts-martial usually call on the interpreters of the civil courts, where their services are available. A member of the court-martial is not disqualified from acting as interpreter, and may do so with advantage where the evidence to be interpreted is not likely to be protracted; but it is

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(*a*) Rule 82. With respect to the examination, cross-examination, and re-examination of witnesses, see further, Rules 84–86, and ch. VI, paras. 104–119.
(*b*) As to the examination of the accused when giving evidence, see note on Rule 59 (B).
(*c*) Rule 83 (A).
(*d*) Rule 81. This, of course, does not apply to a person on trial who gives evidence.
(*e*) Rule 83 (B).
(*f*) Rule 86, and note.
(*g*) Rule 85, and see Rule 86 (D).
(*h*) Rule 86 (D), and note.
(*i*) See also Rule 78 (A) as to cost of witnesses.

Ch. V.

obvious that his acting as such through an extended proceedings might bring him into collision with the parties, and be otherwise inconvenient.

Remarks on employment of interpreter.

70. The greatest caution should be exercised to ensure faithful translation, and to guard against misconception of the true meaning of any expression, either from the incompetence, or from the possible bias, of the person employed to interpret. The interpreter should render the very words as closely as possible, and not run the risk of obscuring the proper force of an expression by attempting to give the corresponding idiom, and the court may call on him to explain any part of his translation, and may refer to a second interpreter if they should entertain any doubt, or be desirous of further information. Upon a question being raised as to the precise meaning of the words used by a witness, they should instantly be taken down in the equivalent English character, when the language has a peculiar alphabet, or as near the sound as may be when it is not a written language (*a*). A party to the trial is at liberty to request the presence and assistance of a private interpreter, and may apply to the court to hear his version of the precise meaning of the witness's words, or an illustration on his part of any phrase which admits of a second construction ; and the court will, according to the circumstances of the particular case, decide on the application, neither allowing unnecessary interruption on the one hand, nor restricting the accurate investigation required by justice on the other.

Court is open, but may be closed for deliberation.

71. The court can deliberate in private, and may either withdraw for the purpose or cause the court to be cleared (*b*) ; but at other times the court must be open to the public, military or otherwise, so far as the room or tent in which the court is held can receive them. It is not usual to place any restriction on the admission of reporters for the press.

Absence of member.

72. A member of a court who has been absent during any part of the evidence ceases to be a member (*c*).

Member cannot abstain from voting.

73. Every member of the court is bound to give his opinion on any question which comes before the court, and cannot abstain from voting. The opinions of members are taken in order, beginning with the junior in rank (*d*).

Finding.

74. The court must consider their finding in closed court ; and the finding on each charge must be taken and recorded separately. The finding on a charge will be "guilty" or "not guilty," or "not guilty, and honourably acquit him of the same"; but the court may by a special finding find the accused guilty subject to a statement of exceptions or variations. If the court doubt whether the facts proved amount in law to the offence charged, they may refer to the confirming authority before recording their finding (*e*). In the case of certain specified offences, a person charged with one offence may be found guilty of a cognate offence though not charged : for example, a person charged with stealing may be found guilty of embezzlement, and *vice versâ* (*f*). A recommen-

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(*a*) Rule 95 (B) note. There are other cases where it would be desirable to retain the original words in the proceedings, but it should in no case be allowed to remain without a translation, as many words which present no difficulty on the spot may yet be wholly unintelligible to the confirming authority.

(*b*) Army Act, s. 53 (5), Rule 63.

(*c*) Rule 68.

(*d*) Rule 69.

(*e*) Rules 43, 44, and App. II to Rules. (Form of Proceedings in App. II. par. (10), p. 573.)

(*f*) Army Act, s. 56, ch. VI, para. 9.

dation to mercy will be recorded in the proceedings, with the reasons of the court, and promulgated and communicated to the accused; but, save as provided by the Rules, any expression of opinion as to anything occurring before the court, and any matter which the court may desire to report must be stated in a separate document (*a*).

Of "not guilty."

75. If the court find the accused "not guilty" on all the charges, they will pronounce their finding in open court, and the accused will be discharged (*b*).

Of "guilty."

76. If, on the other hand, the court find the accused guilty of any charge, they will proceed to consider their sentence; though before doing so, all the charges in all the charge sheets (if more than one) must, unless otherwise directed by the convening officer, be tried: and one sentence only can be awarded in respect of all the offences of which the accused is found guilty (*c*).

Procedure on conviction preliminary to consideration of sentence.

77. The court should, unless it seems to be impracticable, before considering their sentence take evidence of the former convictions (if any) of the offender, and of the other particulars mentioned in Rule 46, and at the conclusion of the evidence the accused is entitled to address the Court thereon; and, in addition, the prosecutor must call the attention of the Court to the fact (where that is the case) that their finding subjects the accused to some exceptional punishment such as forfeiture of corps pay, and the Court must inquire into the nature and amount of that punishment (*d*).

Wording, date, and signature of sentence.

78. The punishment awarded by the Court must be one of those allowed by the Army Act (*e*). Consequently, a non-commissioned officer cannot be sentenced to a reprimand, nor can an army schoolmaster, unless he has been transferred from the ranks, be sentenced to reduction to the ranks. The sentence should follow the forms given (see Appendix II to the Rules), or if no form seems exactly applicable, should follow as nearly as possible the terms of the Army Act, and it will be dated and signed by the president. If there is a judge advocate, he also will sign the proceedings. The proceedings will then be sent for confirmation (*f*).

Proceedings of court.

79. The "proceedings" are an entire record of the whole of the transactions of the particular court (*g*). They are kept under the orders of the judge advocate or president, who is responsible for their accuracy and completeness. The form in which they are required to be recorded will be found at p. 560.

General observations on duty of a court-martial in awarding sentence.

80. In deliberating on their sentence a court-martial should ever remember that the object of awarding punishment is the maintenance of discipline, and should bear in mind the considerations to which their attention is directed by the King's Regulations (*h*). The proper amount of punishment to be inflicted is the least amount by which discipline can be efficiently maintained. Occasionally the exigencies of discipline, apart from the circumstances of the particular case, may render a severe sentence necessary. But apart from special circumstances the court should not inflict a severe sentence merely because it has the power of a general court-martial; and if a general court-martial is of opinion that the case

(*a*) Army Act, s. 53 (9). and note. Rules 49, 95 (E).
(*b*) Army Act, s. 54 (3).
(*c*) Rule 48.
(*d*) Rule 46.
(*e*) See s. 44; and as to Indian officers, s. 180 (2); as to warrant officers, s. 182; and as to non-commissioned officers, s. 183. See also K.R. 583.
(*f*) Rule 50.
(*g*) See Rules 45, 95–100.
(*h*) K.R., para. 583, which gives general instructions to courts-martial for awarding punishments.

Ch. V.

is one for which a sentence of a month's detention is sufficient for the maintenance of discipline, the court should not inflict a heavier sentence merely because the court is a general court-martial. So, again, if the accused has elected to be tried by a district court-martial, instead of submitting to the jurisdiction of his commanding officer, his punishment should not on that ground be increased; in fact, it can hardly in ordinary circumstances be necessary that the court should give a heavier sentence than that which the commanding officer has power to award.

Joint offenders.

81. Where several offenders are found guilty of the same offence, it may often be proper to award different degrees of punishment. In some cases it would appear that the degrees of criminality of the offenders are different; while in others regard will be paid to their relative rank. For example, a non-commissioned officer should as a rule be more severely punished than a private soldier concerned with him in the commission of the same offence.

Further observations.

82. The court has power to punish for contempt a person on trial, but its members should not allow themselves to award an unduly severe punishment through irritation at the conduct of the accused on his trial, or in consequence of the nature of his defence. If persons mixed up in the transaction forming the subject of the trial have been witnesses at the trial, the accused is entitled to impeach their motives and charge them with criminality; and if he oversteps the boundary of propriety in this respect, by making entirely groundless charges against them, or against other innocent persons, he can, if necessary, be tried for making false accusations (*a*).

Further observations; classification of offences.

83. Offences, considered in reference to the award of sentence, may be committed with or without premeditation, and with or without provocation; and beginning with the highest degree of criminality may be classified as follows:

(1.) Offences committed with premeditation and without provocation:

(2.) Offences committed with premeditation and with provocation:

(3.) Offences committed without premeditation and without provocation:

(4.) Offences committed without premeditation and with provocation.

In cases of doubt as to the proper amount of punishment to be awarded, it will be useful to bear in mind this classification.

Repeated offences of individual.

84. Another material element in crime in reference to the individual is its frequency; in other words, an habitual offender deserves far greater punishment than an infrequent offender; and in every case if possible the first offence should be treated leniently.

General prevalence of crime.

85. Military offences, however, must be considered in reference to circumstances other than those immediately connected with the individual offender. When there is a general prevalence of offences or of offences of some particular class, an example may be necessary (*b*), and a severe punishment may justly be awarded in respect of an offence which otherwise would receive a more lenient punishment. In such cases the punishment for the offence must be regarded

(*a*) See s. 27, and Rule 60 (C), and notes.

(*b*) See instructions to courts-martial (p. 576), wherein it is stated that before the court is closed to consider their sentence, a certified copy of any local order which may have been issued regarding the prevalence of any particular offence, is to be produced to the court.

in reference to the effect to be produced on the military body to which the offender belongs, rather than in reference to the act of the individual himself.

Insubordinate language.

86. Military offences, unlike civil offences, frequently consist in words, *e.g.*, the use of insubordinate language. As a general principle, the improper use of words should not be treated with the same severity as offences consisting in acts. Further, great care should be taken in discriminating between mere angry or irritable expressions, and words indicating a deliberate intention to be insubordinate or to resist lawful authority. A soldier frequently uses violent language which is a mere outburst of momentary irritation or excitement, without at all intending to be insubordinate. Again, allowance must be made for the coarse expressions which a man of inferior education will often use as mere expletives. Such expressions may be insubordinate if used to a commissioned officer, and not so when used to a non-commissioned officer, or when used under one set of circumstances, and not when used under another. Language, therefore, should be construed with due regard to all surrounding circumstances ; and the intention of the man in using it should be carefully considered, before it is held to constitute the grave offence of using threatening or insubordinate language to a superior officer.

Discipline, how best maintained.

87. In all cases the whole corps should have an opportunity of seeing that the punishment awarded to any individual is not more than is necessary, in the interests of the corps itself, and for the maintenance of discipline. Without discipline all military bodies become mobs, and worse than useless ; but discipline enforced by punishment alone is a poor sort of discipline, which will not stand any severe strain. What must be aimed at is that high state of discipline, which springs from a military system administered with impartiality and judgment, so as to induce in all ranks a feeling of duty, and the assurance that, while no offence will be passed over, no offender will be unjustly dealt with.

Recommendation to mercy.

88. As the court have (save in the case of conviction of an officer under s. 16 of the Army Act, for conduct unbecoming an officer and gentleman, and in the case of a conviction for murder under s. 41 (2)) absolute discretion as to the sentence, a recommendation to mercy will be exceptional (*a*). It will usually be required only where the offence is in itself very serious, and where the court, though unwilling to pass a lenient sentence, lest the offence should be considered a venial one, think that, owing to the offender's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule, the court will be able to adjust the sentence according to what, in their judgment, the offender should suffer, having regard not only to the offence, but to the attendant circumstances and his character, so that the award may be final and carried into effect. It is indisputable that crimes are more effectually prevented by certainty than by severity of punishment.

(iii.) *Proceedings subsequent to Finding and Sentence of Court-Martial.*

Confirmation of proceedings.

89. The acquittal by court-martial on any charge of an accused person is final, but a conviction and sentence are not valid until confirmed by superior authority (*b*). Where there is a judge

(*a*) Army Act, s. 53 (9), Rule 49. (*b*) Army Act, s. 54 (3) (6).

Ch. V.

advocate, he is responsible for transmitting the proceedings for confirmation; where there is not a judge advocate, this duty devolves on the president.

Of regimental court-martial.

90. The finding and sentence of a regimental court-martial are to be confirmed by the convening officer, or by the officer having authority to convene the court at the time of the submission of the proceedings (*a*).

Of district court-martial.

91. The finding and sentence of a district court-martial are to be confirmed by an officer authorised to convene general courts-martial, or deriving authority to confirm from an officer authorised to convene general courts-martial (*b*).

Of general court-martial.

92. The finding and sentence of a general court-martial are to be confirmed by His Majesty, or by an officer deriving authority to confirm either immediately or mediately from His Majesty (*c*).

Warrant for general court-martial.

93. This authority, where given by the King, is given by the warrant respecting courts-martial mentioned above. Any warrant, whether issued by the King or by an officer, may reserve any of the powers which would otherwise be conferred by it (*d*).

In the U.K.

94. The warrant issued to an officer in the United Kingdom does not usually give authority to confirm the findings and sentences of general courts-martial, which, consequently, in the United Kingdom, require confirmation by the King.

In India and elsewhere abroad.

95. The warrant issued to an officer commanding abroad usually gives authority to confirm the findings and sentences of general courts-martial, and to delegate that power. Where the officer is the Commander-in-Chief in India, and sometimes where he is commanding-in-chief on active service, the power of confirmation is given without any reservation, except at the option of the officer. In other cases, besides the optional reservation, the warrant reserves for confirmation, by the King, the finding and sentence, where a commissioned officer (*e*) is sentenced to death, penal servitude, cashiering, or dismissal. An officer commanding a force on active service serving in India, or proceeding from India, usually holds his warrant from the Commander-in-Chief in India; but if he comes under the command of an officer holding a warrant from the King, he can only exercise the confirming power by delegation from that officer.

Delegation as to district court-martial.

96. Every officer empowered to convene general courts-martial has, by virtue of the Army Act, authority to confirm the findings and sentences of district courts-martial, and to delegate that power (*f*).

Power of confirming authority to send back finding and sentence for revision.

97. The confirming authority can order a revision once only; and the court must re-assemble and consider, without taking additional evidence, either the finding or the sentence, or both of them, as directed. If the finding only is sent back, and the court do not adhere to it, the court must also reconsider their sentence;

(*a*) Army Act, s. 54 (1) (*a*).
(*b*) Army Act, s. 54 (1) (*c*), and s. 123.
(*c*) Army Act, s. 54 (1) (*b*), and s. 122. As to field general courts-martial, see s. 54 (1) (*d*), and Rule 119.
(*d*) See para. 22, above. As to promulgation of proceedings, see Rule 53, and K.R., para. 593.
(*e*) This does not apply to a native commissioned officer in a colony, the finding and sentence on whom may, in all cases, be confirmed by the general officer commanding the forces in such colony, or at his option reserved for confirmation by the King.
(*f*) Army Act, s. 123 (1) (*c*).

but if the sentence only is sent back, they cannot revise the finding (*g*). On revision the court cannot for any reason increase the sentence (*h*). If the court adhere to their finding and sentence, the confirming authority can only either confirm or refuse confirmation. A conviction and sentence are not valid until confirmation, and therefore a refusal of confirmation in effect annuls the whole proceeding, except where confirmation is withheld wholly or partly for the purpose of referring to superior authority (*a*).

Mitigation, remission, and commutation of punishment.

98. The confirming authority can, when confirming the sentence, whether after revision or without it, mitigate, remit, commute, or suspend the punishment (*b*). After confirmation the punishment can only be mitigated, remitted, or commuted by the King, or the Commander-in-Chief (when that office is in existence), or the officer commanding the district or station where the prisoner is, or any officer specified in the Army Act or prescribed by the Rules of Procedure for the purpose (*c*). But as this power cannot be exercised by any officer inferior to the authority who confirmed the sentence, an officer in the United Kingdom has no power to mitigate, remit, or commute a sentence passed by a general court-martial in the United Kingdom; and in the case of any court-martial held elsewhere, can only do so if his command is not inferior to that of the officer who confirmed the sentence, unless in either case he acts under orders from superior authority (*d*).

Approval of sentence of death in colony.

99. Sentence of death in a colony requires not only confirmation by the military authority, but also (save when passed in respect of an offence committed on active service) approval by the governor of the colony. In India, however, such approval is only required where the offence is treason or murder; but both in India and a colony a sentence of penal servitude for any offence tried as a civil offence under s. 41, requires the approval of the governor. The approval is required to be given in India by the Governor-General (*e*).

Directions for execution of sentence.

100. An officer who confirms a sentence is responsible for seeing that the sentence is carried into effect, and for this purpose he will, where necessary, obtain the approval above required for a sentence of death, and in all cases will give the necessary directions for the execution of the sentence. If the sentence is approved by the King these directions will be given by the Army Council.

Execution of sentence of penal servitude.

101. Sentences of penal servitude, wherever passed, are (subject to the proviso mentioned in para. 103) required to be executed in the United Kingdom, and have the same effect as sentences of penal servitude passed by a civil court in the United Kingdom. Provision is made for bringing a penal servitude prisoner from any place out of the United Kingdom to a prison in the United Kingdom; and when once he is there he comes under the authority of the Home Secretary (*f*).

(*a*) Army Act, s. 54 (5) (6), and note. As to the principles on which the power of commutation or mitigation is to be exercised, and remarks by confirming officer and promulgation, see K.R., paras. 588, 589, 590, Army Act, s. 53 (9), Rules 53, 97 (A) note. A refusal to confirm should be signified in writing on the proceedings signed by the confirming authority, and the reasons for the refusal may be stated, see Form in Appendix II to Rules para. (14), p. 579; see also para. 5, above.

(*b*) Army Act, s. 57 (1), and note. Rule 54.

(*c*) Army Act, s. 57 (2); and as to prescribed officer, see Rule 126, (C).

(*d*) Army Act, s 57 (3).

(*e*) Army Act, s. 54 (4) (7) (8) (9).

(*f*) Army Act, ss. 58–62, K.R., paras. 602–606.

(*g*) Army Act, s. 54 (2), Rule 52.

(*h*) Army Act, s. 54 (2), Rule 51, note.

Ch. V.

Of imprisonment.

102. Sentences of imprisonment exceeding twelve months, wherever passed, are also (subject to the proviso mentioned in para. 104) to be executed in the United Kingdom. If not brought to the United Kingdom, a prisoner has to undergo his imprisonment either in military custody, or in some authorised prison, or in a detention barrack (*a*). He can, however, be temporarily confined in any other prison.

Of detention.

103. Sentences of detention exceeding twelve months must (subject to the proviso mentioned in para. 104) also be executed in the United Kingdom. Detention has to be undergone either in military custody, or in a detention barrack, but a soldier sentenced to detention cannot be confined in a prison. In the United Kingdom sentences of detention may be undergone in a branch detention barrack, or barrack detention rooms; but where they exceed fourteen days, should be carried out in a detention barrack (*b*).

Further provisions.

104. An offender sentenced to penal servitude, imprisonment, or detention, need not be brought to the United Kingdom, if he belongs to a class with respect to which the Secretary of State has declared that by reason of climate or place of birth or of enlistment, it is not beneficial to the offender to transfer him to the United Kingdom. Nor need an offender sentenced to imprisonment or detention be brought to the United Kingdom, if the court or other authority mentioned in s. 131 for special reasons otherwise orders (*c*).

(*a*) Army Act, ss. 63–66. K.R., paras. 607, 645, and see for the mode in which a term of imprisonment is to be awarded, K.R., para. 585, and generally as to disposal of military convicts, military prisoners, and soldiers undergoing detention, &c., K.R., paras. 600–644.

(*b*) Army Act, s. 63; and K.R. para. 645.

(*c*) Army Act, s. 131 (2), the note to which states the regulations made by the Secretary of State.

CHAPTER VI.

EVIDENCE.

Introductory.

Meaning of "Rules of Evidence."

1. The rules of evidence are the rules which regulate the mode in which questions of fact may be determined for judicial purposes. The object of every criminal trial is, or may be, to determine two classes of questions—questions of fact and questions of law. If the accused person pleads guilty, there is no question of fact involved in the trial; but if he does not, he raises two questions or issues: first, whether the facts charged against him happened; and next, if they did happen, what is their legal consequence.

English rules of evidence primarily applicable to trial by jury.

2. In trial by jury, these two questions are answered by different persons. The jury, *under the guidance of the judge*, find the facts. The judge lays down the law. It was with reference to trial by jury that the English rules of evidence were originally framed, and it is to this mode of trial that they are still primarily applicable. They are, in fact, the rules in accordance with which a judge guides a jury. In trials before courts-martial, the members of the courts both find the facts and lay down the law, and thus perform the functions of both jury and judge. It therefore becomes their duty, when applying their minds to questions of fact, in the capacity of jurymen, to consider themselves bound by the rules which, in the case of an ordinary trial by jury, are laid down by the judge.

Nature of evidence.

3. Now, a juryman is supposed to bring with him to the consideration of the questions which he has to try common sense, and a general knowledge of human nature and of the ways of the world. But he is not supposed to bring with him any special knowledge enabling him to answer the particular questions of fact raised in the trial. His knowledge of these matters is derived from what is proved to him at the hearing. The means of proof, or evidence, usually consists of statements made by witnesses under examination, or of documents produced for inspection, and is therefore commonly classified as being either oral evidence or documentary evidence. But the jury, or, in the case of trials by court-martial the members of the court, may supplement by direct information the knowledge derived from these sources. Thus they may inspect for themselves anything sufficiently identified by evidence, and produced in court as material to their decision; or they may go to view any place the sight of which may help them to understand the evidence.

Difference between judicial and non-judicial inquiries.

4. There is no difference in principle between the method of inquiry in judicial and in extra-judicial proceedings. In either case a person who wishes to find out whether a particular event did or did not happen tries, in the first place, to obtain information from persons who were present and saw what happened (*direct* evidence), and, failing that, to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen (*indirect* evidence). But

Ch. VI.

in judicial inquiries the information given must be on oath, and be liable to be tested by cross-examination, and there are certain rules of law which exclude from the consideration of a jury particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration. Statements so excluded are said to be "not admissible as evidence," or "not evidence" (*a*). And if a member of a court-martial is in doubt whether a statement which it is proposed to make to him is, or is not, admissible as evidence, the most useful advice that can be given to him is, first to use his common sense as to whether the matter proposed to be proved has any practical bearing on the question which he has to try, and, if he thinks that it has, then to consider whether it falls within any one of the negative or exclusive rules of law to which reference has been made.

Reasons for excluding certain classes of evidence in judicial inquiry.

5. The answer to the question why particular statements should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following :—

1. It assists the jury.
2. It secures fair play to the accused.
3. It protects absent persons.
4. It prevents waste of time.

It assists the jury by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused, because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects with which that fact is more or less connected.

Evidence in courts-martial to be governed by English law.

6. The rules of evidence to be followed by courts-martial are to be those adopted in courts of ordinary criminal jurisdiction in England (*b*). These rules are to be found in the ordinary text-books on the subject, such as Taylor on Evidence, Roscoe's Digest of the Law of Evidence in Criminal Cases, Stephen's Digest of the Law of Evidence, and Wills' Theory and Practice of the Law of Evidence ; but as only a limited number of these rules are from the nature of the case applicable to proceedings before courts-martial, it is thought that it may be useful to state and illustrate shortly the most important of those which are so applicable.

Matters with which rules of evidence are concerned.

7. The principal matters with which the rules of evidence are concerned may, for the purpose of this chapter, be classified as follows :—

(i.) *What must be proved.*
(ii.) *What facts are assumed to be known* (judicial notice).

(*a*) The two phrases illustrate the wider and narrower sense of the term "evidence." In its narrower sense it means that kind of evidence which is recognised by courts of law.

(*b*) Army Act, ss. 127 and 128 ; Criminal Evidence Act, 1898 (61 & 62 Vict., c. 36) ; and Rule 73.

(iii.) *By which side proof must be given* (burden of proof).
(iv.) *What statements are admissible as evidence* (admissibility of evidence).
(v.) *When admissions or confessions may be admitted as evidence.*
(vi.) *Who may give evidence* (competency of witnesses).
(vii.) *What questions need not be answered and what documents need not be produced* (privilege of witnesses).
(viii.) *How evidence is to be given.*

(i.) *What must be proved.*

Charge brought must be proved.

8. What must be proved, in order to obtain a conviction, is the particular charge brought As a general rule, every charge alleges, or ought to allege, a specific offence constituting a breach of a specific enactment (*a*); and, subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared. And the exceptions will be found not to conflict with this reason, since they relate either to cases where the distinction between two offences is mainly technical; or to cases where the distinction is one of degree, but not of kind, and the accused, having been charged with the more serious, is allowed to be convicted of the less serious offence (*b*). The former class of cases is illustrated by the enactments providing that a person charged with felony may, in certain cases, be convicted of a misdemeanour; and that a person charged with stealing may be convicted of embezzlement, and *vice versâ*. The second class is illustrated by the common law rule that on an indictment for murder, if the prosecutor fails in proving malice prepense, the accused may be convicted of manslaughter; and by the provisions contained in s. 56 (3) (5) of the Army Act.

Substance only of charge need be proved.

9. It is the substance only of the charge that need be proved. Allegations which are not essential to constitute the offence, and which may be omitted without affecting the validity of the charge, do not require proof, and may be rejected as surplusage (*c*). In some cases, as in charges against a sentinel for misbehaviour on his post, or in a charge for not giving immediate notice of desertion (*d*), the time or place of the offence is material; but as a rule it is not so. Where the court think that the facts proved differ materially from the facts alleged, but prove the same charge, they are empowered by Rule 44 (B) to record a special finding, instead of a finding of "Not guilty."

(ii.) *What facts are assumed to be known.*

Judicial notice.

10. The court are said to take judicial notice, in other words not to require evidence, of any facts which are so generally known as not to require special proof. By Rule 74 the court are expressly authorised to take judicial notice of all matters of notoriety, including all matters within their general military knowledge.

(*a*) See Rules 9–12, and 23. As to offences of conduct to the prejudice of good order and military discipline, see s. 40 of the Army Act, and ch. III, para. 32.

(*b*) The provision in s. 56 (4) of the Army Act, which allows a person charged with attempting to desert to be found guilty of desertion, cannot be placed under either of these heads of exceptions, but is in a class by itself.

(*c*) See Rules 9–12, and 23, and as to particulars of time and place in the charge, see Note as to use of Forms of Charges (18)–(22), at the beginning of Appendix I to the Rules, pp. 531, 532.

(*d*) See Army Act, ss. 6 (1) (*k*), 14 (2).

Ch. VI.

Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know (*a*). Nor, again, would it be necessary to prove that an important battle was fought on the 18th of June, 1815.

Matters of which judicial notice will be taken.

11. Among the matters of which it is the duty of all judges to take judicial notice may be mentioned:—Acts of Parliament: the general course of proceedings and privileges of Parliament, the date and place of the sittings of each House, but not transactions in their journals; the course of proceedings and rules of practice in the Supreme Court of Judicature; the accession of the King; the existence and title of every State and Sovereign recognised by the King; the Great Seal, the Privy Seal, the Seals of the Superior Court of Justice; the seal of any notary-public in the British Dominions, and various other seals; the extent of the territories under the dominion of the Crown, and the territorial and political divisions of the different parts of the United Kingdom; the ordinary course of nature, natural and artificial divisions of time, and the meaning of English words; and all other matters which they are directed by any statute to notice.

(iii.) *By which side Proof must be given.*

Burden of proof.

12. In considering the practice as to the burden of proof regard must be had to two rules; *first*, that every man is presumed to be innocent until he is proved to be guilty; and, *second*, that he who alleges a fact must prove it, whether the allegation is couched in affirmative or negative terms. It follows from both these rules that it is incumbent on the prosecution in the first instance to give evidence of the commission of the offence, and connecting the accused with the commission, and that then, but not till then, the accused is bound to prove any facts from which he wishes the court to infer his innocence. The rule that he who alleges a fact must prove it, even though the allegation is couched in negative terms, is subject to two exceptions:—

(1) Some statutes expressly provide that the proof of lawful excuse, or authority, or the absence of fraudulent intent, shall lie on the person charged, although by the terms in which the offence is defined they are expressly made elements of the offence, as in the statute making it criminal to be found by night in the possession of housebreaking implements without lawful excuse (*b*);

(2) Where the subject of the negative assertion is peculiarly within the knowledge of the accused, he must prove it as a matter of defence. For instance, in a charge of leaving the ranks or a post without orders, absence without leave, releasing a person without authority, or detaining a person unnecessarily (*c*), it would lie on the person charged to prove that the requisite orders, leave or authority had been given, or that the necessity existed. On the other hand, when a soldier is charged with

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(*a*) See s. 6 (1) (*e*), 8, 10 (3), 17 and 25 (1), of the Army Act, as illustrations of matters which would be presumed to be within the general military knowledge of an officer.

(*b*) Larceny Act, 1861 (24 & 25 Vict., c. 96), s 58.

(*c*) See Army Act, ss. 5 (1), 6 (1) (*b*), 15, 20 (1), 21 (1).

breaking out of barracks (*a*), it would lie on the prosecutor in the first instance to prove that the accused had no right to quit them.

Shifting of burden of proof.

13. As the trial goes on, the burden of proof may be shifted from the prosecutor to the accused by the proof of facts which raise a presumption of his guilt. Thus A. is accused of stealing a five-pound note. The burden of proof is on the prosecution. He is shown to be in possession of the note soon after the fact. The burden of proof is shifted to A. A. shows that the note was given him in change for a ten-pound note. The burden of proof is shifted to the prosecution.

Presumption of intent from unlawful act.

14. Where it is proved that an unlawful act has been committed, a criminal intention is presumed, and the proof of justification or excuse lies on the accused. On a charge of murder the law presumes malice from the act of killing, and throws on the accused the burden of disproving the malice by justifying or extenuating the act. On a charge of wilfully maiming or injuring with intent to render unfit for service, the intent will be presumed if it is shown that the act was wilfully done (*b*).

(iv.) *What statements are admissible as Evidence.*

Rules as to admissibility of evidence.

15. It has been remarked above that there are certain rules which exclude from consideration on judicial inquiries classes of evidence which would be taken into consideration on ordinary inquiries The most important of these negative or exclusive rules may, with reference to criminal proceedings, be stated as follows :—

I. Nothing shall be admitted as evidence which does not tend immediately to prove or disprove the charge. Rule of relevancy.

II. The evidence produced must be the best obtainable under the circumstances. Rule of best evidence.

To these may be added, subject to important qualifications :—

III. Hearsay is not evidence. Hearsay.

IV. Opinion is not evidence. Opinion.

I. Rule of relevancy.

16. The form in which the first rule is expressed shows the vagueness, and, it may be added, the necessary vagueness, of its character. What classes of facts "tend immediately" to prove or disprove a charge? Or, to use a more technical expression (*c*), what facts are "relevant"? To this question no direct answer can be given. No precise line can be drawn between "relevant" and "irrelevant" facts. All that can be done is to state certain subordinate rules illustrating the kind of line which experience has induced courts to draw with respect to particular classes of facts. Common sense must supply the rest.

Character not evidence for prosecution.

17. In the first place the character or general reputation of the accused person is not admissible as evidence of his guilt. This rule is most important to prevent the injustice which might arise from prejudice or unpopularity. "Give a dog a bad name and hang him," represents the popular instinct. "A man shall not be convicted because he has a bad name," says the law. For this reason the prosecutor may not give evidence of character, except to rebut evidence to a contrary effect given on behalf of the accused (*d*).

(*a*) Army Act s. 10 (4).
(*b*) See Army Act s. 18 (2).
(*c*) See Rule 73 (A).
(*d*) As to reply to witnesses to character called by the accused, see Rules 40 (3) (E), 86 (C). The Court may also, after conviction, for their guidance in determining the sentence, take evidence as to the character of the accused (Rule 46).

Ch. VI.

Character admissible as evidence for defence.

18. On the other hand, the accused may call witnesses to speak generally as to his character. The evidence, however, of such witnesses must be confined to the general reputation of the accused for good character, and evidence of particular cases of praiseworthy conduct in the accused is not properly admissible. This general reputation for good character may be evidenced by showing that the record of the accused in the conduct book is good, or that his superior officers have publicly approved of the way in which he has conducted himself while in the service.

Effect of evidence as to character.

19. Evidence of general good character cannot avail the accused against evidence of the fact, but where some reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence ; and where intention is a principal ingredient in the offence, or where presumptive proof only is adduced, evidence as to character, bearing on the charge, may be highly important, and serve to explain the conduct of the accused. On a trial for treason, Lord Kenyon observed, "An affectionate and warm evidence of character, when collected together, should make a strong impression in favour of a prisoner ; and when those who give such a character in evidence are entitled to credit, their testimony should have great weight with the jury." On a charge of murder, where malice is the essence of the crime, expressions of goodwill and acts of kindness by the accused towards the deceased are always considered important evidence, as showing what was his general disposition towards the deceased, and leading to the conclusion that his intention could not have been that imputed to him. On a charge of stealing, character for honesty may be entitled to great weight. So also on a charge implicating the courage of a soldier, character for bravery and resolution might be of vast importance. But it would be manifestly absurd and irrelevant, on a charge of stealing, to allow character for bravery to weigh in the scale of proof ; or on a charge of cowardice, to be biassed by a character of honesty. General character, unconnected with the charge, though it may not weigh with the court, except in awarding punishment in discretionary cases, may essentially serve the accused, by influencing the superior with whom it rests to mitigate or remit the sentence.

Evidence of facts tending to show general disposition not admissible.

20. Evidence that the person accused of an offence committed a like offence or acted in a similar manner on another occasion, is not admissible merely for the purpose of showing that he has a general disposition to commit such offences. Thus, on a charge of murder, the prosecutor cannot give evidence of the conduct of the accused in respect of other persons for the purpose of proving a bloodthirsty and murderous disposition. So, on a charge against a sentry of having been asleep on his post on a particular occasion, evidence that he had been found asleep on his post on other occasions would not be admissible for the purpose of showing that he would be likely to commit the offence ; and on a charge of insubordination, evidence of insubordinate conduct on other occasions would not be admissible for the purpose of showing a tendency to insubordinate conduct (*a*).

Where several offences connected, evidence of one admissible as proof of another.

21. But where several offences are so connected with each other as to form part of an entire transaction, evidence of one is admissible as proof of another. On a charge of stealing, for example, though it is not material in general to inquire into any

(*a*) See, however, below, para. 93 (A).

other taking of goods besides that specified in the charge, yet for the purpose of ascertaining the identity of the person, it is often important to show that other goods which had been upon an adjoining part of the same house and grounds were taken in the same night, and afterwards found in the possession of the accused. This is strong evidence of the accused having been near the owner's house on the night of the robbery ; and from that point of view it is material. Thus, also, to prove the crime of arson, it may be shown that property which had been taken out of the house at the time of the firing was afterwards found secreted in the possession of the accused. So, on a charge of desertion, it may be admissible to inquire into the fact of (*not* the facts attending) a highway robbery which had been committed by the accused on the night on which he absented himself, and for which he had been tried and convicted by a civil court. The crime of desertion, depending on the intention not to return, might be inferred, in connection with other circumstances, from the commission of a heinous offence ; and such collateral evidence is admissible to prove the intention of the accused.

Facts showing intention ; knowledge, belief, &c.

22. And where intention, knowledge, belief, malice, or any other state of mind, is a necessary ingredient of the offence charged, the commission of the principal act being either admitted or proved, evidence may, for the purpose of proving the existence of such a state of mind in reference to the particular matter in question, be given of similar acts committed by the accused on different occasions. Thus, although on a charge of murder evidence as to the disposition of the accused, is, as has been stated, inadmissible, yet former attempts by him to assassinate the deceased are admissible as a proof of intention. So also evidence is admissible as to former menaces or expressions of vindictive feeling towards the deceased. Again, on a charge of uttering base coin, proof that the accused uttered base coin on other occasions is admissible as evidence that he *knew* the coin to be base ; and on a charge of obtaining credit by means of fraud, where it was proved that the accused hired furnished apartments and left them without paying for them, evidence that he had also gone to other houses and left without paying was held admissible as negativing the existence of any reasonable or honest motive (*a*).

Facts showing intention ; (further illustrations).

23. In support of a charge for malicious, disrespectful, or unbecoming language, addressed by word of mouth, or written to, or used of, a superior officer at a stated time, or in a particular letter, after having proved the words in the charge, the prosecutor, to show the spirit and intention of the accused, may prove also that he spoke or wrote either disrespectful or malicious words on the same subject, either before or afterwards, or that he published or disseminated copies of the letter set forth as disrespectful in the charge. This evidence is admissible, not in aggravation of the offence charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge ; and the accused may give in evidence, as negativing a deliberate purpose, or as palliating, though not justifying his conduct, that he had been provoked to act as he had by the conduct of his superior towards him. So, on an indictment for malicious shooting, if it is questionable whether the shooting was by accident or design, proof may be given that at another time the accused intentionally shot at the same person.

(*a*) *R.* v. *Wyatt, L.R.* [1904] 1 K. B., 188.

Ch. VI.

Facts showing intention; (further illustrations).

24. Where the charge is of a nature which makes the intention a principal issue, as where a person is charged with treason, or with a design to undermine the influence of the commanding officer, an inquiry may be allowed into the conduct and sentiments of the accused on particular occasions, but with reference only to the overt act laid or specified in the charge, and to the transactions proved against him. The intention of one particular act may be best evinced by other contemporaneous actions, but great caution is needed to prevent injustice to the accused by extending the inquiry to matters wholly unconnected with the charge. It would be the height of injustice to allow such an attack upon him as would involve the necessity of his entering unprepared and at once on the defence of every action of his life.

Evidence as to motive, preparation, subsequent conduct, or consequences admissible.

25. Again, where there is a question whether a person committed an offence, evidence may be given of any fact supplying a motive or constituting preparation for the offence, of any subsequent conduct of the person accused, which is apparently influenced by the commission of the offence, and of any act done by him, or by his authority, in consequence of the offence. Thus, evidence may be given that, after the commission of the alleged offence, the accused absconded, or was in possession of the property, or the proceeds of property, acquired by the offence, or that he attempted to conceal things which were or might have been used in committing the offence, or as to the manner in which he conducted himself when statements were made in his presence and hearing.

Acts of conspirators.

26. In cases of conspiracy, after *primâ facie* evidence has been given of the existence of the plot, and of the connection of the accused therewith, the charge against one conspirator may be supported by evidence of anything done, written, or said, not only by him, but by any other of the conspirators, in furtherance of the common purpose. Thus on the consideration of a charge of mutiny, or exciting mutiny, evidence of this kind may, after such *primâ facie* proof, be received against a particular one of the accused.

Statements not forming part of conspiracy inadmissible.

27. Statements of the class above described are admissible as evidence, if they are made in execution of the common purpose, because they form part of the transaction to which the inquiry relates (*a*). But a statement made by one conspirator, not in execution of the common purpose, but in narration of some event forming part of the conspiracy, falls within the rule of hearsay, to which reference will be made hereafter, and is not admissible as evidence against another conspirator, unless made in his presence (*b*). In consequence of this distinction, the admissibility of writings often depends on the time when they are proved to be in the possession of fellow conspirators, whether it was before or after the apprehension of the accused.

Illustrations of evidence admissible on charge of conspiracy.

28. Thus, on the trial of a person for a treasonable conspiracy, some papers, containing a variety of plans and lists of names, which had been found in the house of a co-conspirator, and which had a reference to the design of the conspiracy, and were in furtherance of the plot, were held to be admissible as evidence against the accused. All the judges were of opinion that these papers ought to be received in the case, inasmuch as there was strong presumptive evidence that they were in the house of the co-conspirator before the apprehension of the accused, for the room in which the papers were found had been locked up by one of the

(*a*) See below, paras. 51, 52.
(*b*) See *R.* v. *Blake*, 6 Q.B., 126; Stephen Dig. Ev., p. 6 and 7; Wills, pp. 116 *et seq.*

conspirators. And the judges distinguished the point in this case from a case cited where the papers were found, after the apprehension of the accused, in the possession of persons who possibly might not have obtained the papers until afterwards.

Acts and declarations of accused when evidence for him in conspiracy cases.

29. As in trials for conspiracies, whatever the accused may have done or said at any meeting alleged to have been held in pursuance of the conspiracy may be given in evidence against him on the part of the prosecution, so, on the other hand, any other part of his conduct at the same meeting will be allowed to be proved in his behalf: for his intention and design at a particular time are best explained by a complete view of every part of his conduct at that time, and not merely from the proof of a single isolated act or declaration.

II. Rule as to best evidence.

30. The meaning of the rule that the evidence produced must be the best obtainable under the circumstances, is this. No evidence which leads us to suppose that other and better evidence remains behind can have any weight, as the production of such inferior evidence suggests that there is some secret or sinister motive for withholding the better and more satisfactory evidence.

Rule chiefly applicable to documents.

31. The rule in question is more strictly enforced with regard to documentary evidence than with regard to oral evidence, and is usually applied in the form of the two well-known sub-rules: (1) That a verbal account of the contents of a document can never be received if the document itself is obtainable: (2) That, subject to certain exceptions, a copy of a document is not admissible when the original document can be produced. In these cases the document itself is said to be primary, whilst the verbal account, or the copy, is called secondary evidence.

Primary and secondary evidence.

Primary evidence of document.

32. Primary evidence of the contents of a document is given by producing the document for the inspection of the court.

Attested and unattested documents.

33. If the document is of a kind which is required by law to be attested, but not otherwise (*a*), it is also necessary to call an attesting witness to prove its due execution. But this rule is subject to the following exceptions:—

(*a*) If it is proved that there is no attesting witness alive, and capable of giving evidence, then it is sufficient to prove that the attestation of at least one attesting witness is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

(*b*) If the document is proved, or purports to be, more than thirty years old, and is produced from what the court considers to be its proper custody, an attesting witness need not be called, and it will be presumed without evidence that the instrument was duly executed and attested.

Distinction between private and public documents.

34. The rule as to the inadmissibility of a copy of a document is applied much more strictly to private than to public or official documents.

Secondary evidence of private documents, when admissible.

35. Secondary evidence may be given of the contents of a private document in the following cases:—

(*a*) Where the original is shown or appears to be in the possession of the adverse party, and he, after having been served with reasonable notice to produce it, does not do so.

(*a*) 28 & 29 Vict., c. 18, ss. 1, 7.

Ch. VI.

(*b*) Where the original is shown or appears to be in the possession or power of a stranger not legally bound to produce it, and he, after having been served with a writ of *subpœna duces tecum*, or after having been sworn as a witness and asked for the document, and having admitted that it is in court, refuses to produce it.

(*c*) Where it is shown that proper search has been made for the original, and there is reason for believing that it is destroyed or lost.

(*d*) Where the original is of such a nature as not to be easily movable (*a*), or is in a country from which it is not permitted to be removed.

(*e*) Where the original is a document for the proof of which special provision is made by any Act of Parliament, or any law in force for the time being (*b*).

(*f*) Where the document is an entry in a banker's book, provable according to the special provisions of the Bankers' Books Evidence Act, 1879 (42 & 43 Vict., c. 11).

Secondary evidence of private documents, how given.

36. Secondary evidence of a private document is usually given either by producing a copy and calling a witness who can prove the copy to be correct, or when there is no copy obtainable, by calling a witness who has seen the document, and can give an account of its contents.

Public documents, what deemed to be.

Primary and secondary evidence of public documents.

37. No general definition of public documents is possible, but the rules of evidence applicable to public documents are expressly applied by statute to many classes of documents. Primary evidence of any public document may be given by producing the document from proper custody, and by a witness identifying it as being what it professes to be. Public documents may always be proved by secondary evidence, but the particular kind of secondary evidence required is in many cases defined by statute. Where a document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom is admissible as proof of its contents, if it is proved to be an examined copy or extract, or purports to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted (*c*).

Certified copies.

38. It is provided by many statutes that various certificates, official and public documents, documents and proceedings of corporations and of joint stock and other companies, and certified copies of documents, bye-laws, entries in registers and other books, shall be receivable as evidence of certain particulars in courts of justice, if they are authenticated in the manner prescribed by the statutes. Whenever, by virtue of any such provision, any such certificate or certified copy is receivable as proof of any particular in any court of justice, it is admissible as evidence, if it purports to be authenticated in the manner prescribed by law, without calling any witness to prove any stamp, seal, or signature required for its authentication, or to prove the official character of the person who appears to have signed it (*d*).

(*a*) *e.g.*, a placard posted on a wall, or a tombstone.
(*b*) These are practically treated on the same footing as public documents.
(*c*) 14 & 15 Vict., c. 99, s. 14.
(*d*) 8 & 9 Vict., c. 113, preamble, and s. 1, and Steph., Dig. Ev., art. 79. A certificate, &c., so receivable is merely handed in to the Court by the party producing it.

Provisions of Documentary Evidence Act as to certain documents.

39. Under s. 2 of the Documentary Evidence Act, 1868 (31 & 32 Vict., c. 37), *primâ facie* evidence of any proclamation, order, or regulation issued by His Majesty, or by the Privy Council, also of any proclamation, order, or regulation issued by or under the authority of any such department of the Government or officer as is mentioned in the first column of the schedule to the Act (*a*), may be given in all courts of justice, and in all legal proceedings, whatsoever, in all or any of the following modes:—(1.) By the production of a copy of the *Gazette*, purporting to contain the proclamation, order, or regulation: (2.) By the production of a copy of the proclamation, order, or regulation purporting to be printed by the Government printer (*b*), or, where the question arises in a court in any British colony or possession, of a copy purporting to be printed under the authority of the legislature of that colony or possession: (3.) By the production, in the case of any proclamation, order, or regulation issued (i) by His Majesty, or the Privy Council, or (ii) by any of the departments specified in the schedule, of a copy or extract purporting to be certified as true either (i) by the clerk or any Lord of the Privy Council, or (ii) by the proper certifying officer specified in the second column of the schedule.

Any copy or extract made in pursuance of the Act may be in print or in writing, or partly in print and partly in writing; and no proof is required of the handwriting or official position of any person certifying in pursuance of the Act, to the truth of any copy of or extract from any proclamation, order, or regulation.

Special provisions of Army Act as to documents provable by copies.

40. Special provision is made by the Army Act for proving, by means of copies, attestation papers on enlistment, King's Regulations, Royal Warrants, and rules, warrants, and orders made in pursuance of the Act, records in regimental books, and proceedings of courts-martial (*c*).

Rules as to best evidence not applicable to distinction between direct and indirect evidence.

41. In connection with the rule as to best evidence, reference may be made to the distinction between direct and indirect evidence. By direct evidence is meant the statement of a person who saw, or otherwise observed with his senses, the fact in question.

(*a*) The schedule as supplemented by the Documentary Evidence Act, 1895 (58 Vict., c. 9), is as follows:—

Column I. *Name of Department or Officer.*	Column II. *Names of Certifying Officers.*
The Commissioners of the Treasury.	Any Commissioner, Secretary, or Assistant Secretary of the Treasury.
The Commissioners for executing the office of Lord High Admiral.	Any of the Commissioners for executing the office of Lord High Admiral, or either of the Secretaries to the said Commissioners.
Secretaries of State.	Any Secretary or Under Secretary of State.
Committee of Privy Council for Trade.	Any member of the Committee of Privy Council for Trade, or any Secretary or Assistant Secretary of the said Committee.
The Poor Law Board,*	Any Commissioner of the Poor Law Board, or any Secretary or Assistant Secretary of the said Board.
The Board of Agriculture and Fisheries.	The President or any member of the Board, or the Secretary of the Board, or any person authorised by the President to act on behalf of the Secretary of the Board.

(*b*) Under the Documentary Evidence Act, 1882 (45 & 46 Vict., c. 9) this expression includes His Majesty's Stationery Office. The same Act extended the Doc. Evid. Act, 1868, to proclamations, &c., issued by the Lord Lieutenant of Ireland. The Act of 1895 (58 Vict., c. 9) extended the Act to any *documents* issued by the Board of Agriculture, now called the Board of Agriculture and Fisheries.

(*c*) Army Act, ss. 163, 165.

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* The functions of the Poor Law Board were transferred to the Local Government Board in 1871.

By indirect, or as it is often called, circumstantial evidence, is meant evidence of facts, from which the fact in question may be inferred or presumed. The rule as to best evidence has no application to the difference between direct and indirect evidence. Direct evidence is not better than indirect or circumstantial evidence, the difference between them being one not of *degree* but of *kind*.

Nature and strength of circumstantial evidence.

42. From the circumstances under which crimes are ordinarily committed, it follows that direct evidence of their commission is rarely obtainable, and that in the great majority of cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it; for it has become a proverb that "facts cannot lie," whilst witnesses may. On the other hand, it must always be borne in mind that if facts cannot "lie," they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is not that which ought to be placed upon them. Therefore, before the court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion than that the accused was the guilty person (*a*).

Illustrations of difference between good and bad circumstantial evidence.

43. The writer of a series of papers on the value and danger of circumstantial evidence, which appeared some years ago in a legal paper (*b*), states one of the leading rules with respect to this class of evidence as follows :—"*The facts on which it is sought to found "the inference of guilt must be visibly and evidently connected with the "crime*,"—and illustrates the rule by contrasting two groups of facts, of which the first would not, whilst the second would, constitute convincing circumstantial evidence of a crime. The characteristic difference between good and bad circumstantial evidence cannot be better explained than by quoting the passage which contains this illustration :—

"In one of the works on evidence there is an admirable example
" of a series of circumstances such as are intended to be excluded by
" this rule, which we take the liberty of epitomising ;—

"1. The accused was a man of bad general character.

"2. He belonged to a nation characteristically regardless of
" human life.

"3. He narrowly escaped conviction on a charge of murder some
" years before.

"4. There is a strong ill-feeling between his nation and that of
" the deceased.

"5. He was heard to make exclamations in his sleep indicating
" a consciousness of having committed some terrible deed.

"6. The deceased was robbed, and the accused is proved to be
" notoriously greedy about money.

"It is scarcely necessary to say that, if a series of such circum-
" stances were indefinitely accumulated, it would fail to produce
" in a sane mind a conviction that the accused was guilty. There
" is no visible *ligamen* between these facts and the facts sought to
" be established that the accused committed the murder, as all the
" facts are perfectly consistent with his innocence. Contrast such
" circumstances with such as ordinarily present themselves in strong

(*a*) *Hodge's case*, 2 Lewin, C. C., 227.
(*b*) Law Journal, Oct. 11, 1879.

" cases of circumstantial evidence. Let us take, for instance, the " following series of facts :—

"1. The deceased was found apparently murdered by a pistol " bullet, which penetrated the skull.

" 2. On the ground near the body was found a small fragment " of a newspaper, which smelled strongly of burnt powder, and led " to the supposition that it had been used in separating the powder " from the ball ; and on the accused being arrested there was " found another piece of newspaper, which corresponded minutely " at the point where it was torn with that found near the body of " the deceased.

" 3. In a pond near the scene of the murder was found a pistol, " which had evidently been only recently thrown into the water, " and into which the bullet fitted.

" 4. The pistol was proved to have belonged to a gentleman in " the neighbourhood ; but it also appeared that the prisoner was " a servant in his employment, and that the pistol was missed the " day before the murder from among several fowling pieces, " pistols, powder flasks, and other articles connected with the " paraphernalia of the sportsman which were arranged in a small " room in the gentleman's house devoted to the purposes of sport. " It was a part of the prisoner's duty to keep this room and its " contents in order.

" 5. When asked whether he ever saw the pistol, he denied it.

" On the prisoner were found two bank notes, which were proved " to have been given to the deceased in part payment for a horse " sold by him to a neighbour.

" The first of these facts at once suggests suspicion against the " accused. As the second and subsequent circumstances are dis- " closed, the suspicion becomes intensified ; and, as the narrative " goes on, the strong apparent connection between the facts and " the crime rapidly culminates, until, even before the last of them " is reached, the climax of moral certainty is attained, and the mind " is forced to accept the conclusion that the accused was the " perpetrator of the crime."

Best evidence does not mean strongest possible assurance.

44. The rule which requires production of the best obtainable evidence does not require the strongest possible assurance ; in other words, does not require the fullest proof of which the case will admit, nor the repetition of evidence beyond that which is sufficient to establish the fact. For instance, it is not necessary, in order to prove handwriting, to call the writer himself ; nor, if a whole regiment should be present at some overt act of mutiny or insubordination, as the striking a commanding officer in front of his regiment, would the law require the production of all the persons present ; for if one witness only were produced, and if, from his situation at the moment of the occurrence, he had as favourable an opportunity of observing what took place as any person present, his evidence would be complete, and not inferior in kind to any that could be produced.

Number of witnesses requisite.

45. On the same principle the law admits as sufficient the testimony of one credible witness, subject to statutory exceptions in the case of treason and treason-felony ; and to the exception that in a trial for perjury one witness alone is not sufficient, without some material and independent corroborative evidence in proof of the statement as to which the perjury is charged, because, otherwise, there is only the oath of one witness against the oath of the person accused. The evidence of a single accomplice is in law sufficient for a conviction, but such evidence must be received with

Ch. VI.

extreme caution, and unless corroborated (see para. 85) should not be accepted as proof of a person's guilt.

III. Rule as to hearsay.

46. The rule as to best evidence says that second-best evidence shall not be produced if better evidence can be found. The rule as to hearsay goes a step further, and says that certain classes of second-best evidence shall not be produced under any circumstances. The term "hearsay" is primarily applicable to what a witness has heard another person say with respect to facts in dispute. But it is extended to all statements, whether reduced to writing or not, which are brought before the court, not by the authors of the statement, but by persons to whose knowledge the statements have been brought. The reasons for excluding such statements are, first, that they are not made on oath; and, secondly, that the person to be affected by the statement has no opportunity of cross-examining its author. The rule has been often criticised on the ground that it sometimes excludes the only means of proof obtainable under the circumstances; but its utility in excluding irresponsible proof is obvious (*a*). It is subject to various limitations or exceptions, the most important of which will be noticed below.

Form of rule as to hearsay in narrower sense.

47. The rule as to hearsay in its narrower sense may be stated as follows:—"No statements with reference to a person charged with an offence, relative to the charge, made in his absence, can be received in evidence against him." This rule is subject to several exceptions: first, the admissibility of so-called "dying declarations"; secondly, the admissibility of statements forming part of what is known by the name of the "*res gestæ*"—that is to say, of the fact, or set of facts, or transaction forming the subject of judicial inquiry; thirdly, the admissibility of statements made by a deceased person against his pecuniary or proprietary interest; and, fourthly, the admissibility of statements made by a deceased person in the strict course of business.

Statement made in presence of accused not excluded.

48. It will be observed that the rule does not include evidence as to statements made in the presence of the accused (*b*), but it must be recollected that evidence of any such statement, although admissible as showing the conduct of the accused when he heard the statement, is not evidence that the statement was true; *e.g.*, evidence that *A.B.* said to the accused "you stole *C's* watch" is admissible to show the conduct of the accused on hearing that accusation, but is not evidence to prove that the accused did in fact steal the watch as alleged.

Dying declarations.

49. The first of the exceptions above referred to is that relating to dying declarations, which are admissible only in trials for murder or manslaughter. In such trials a declaration made by the person killed as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is admissible as evidence, if it is proved that the declarant, at the time of making the declaration, was in actual danger of death, and had given up all hope of recovery. "Dying declarations," said Mr. Justice Byles (*c*), "ought to be admitted with scrupulous, I had almost

(*a*) "Hearsay evidence, as a general rule, is not admissible, and it is not admissible because one knows to what extent people will be and are disposed to speak untruly, even without any motive whatever, and one knows what little importance can be attached to any rumour or anything stated as a mere hearsay."—James, L. J. in *Polini* v. *Gray*, L. R. 12 Ch. Div. at p. 425.

(*b*) As to confession of an accomplice made in the presence of the accused, see below, para. 73.

(*c*) *R.* v. *Jenkins*, L. R. 1 C. C. R. at p. 193.

said with superstitious care. They have not necessarily the sanction of an oath; they are made in the absence of the prisoner; the person making them is not subject to cross-examination, and is in no peril of prosecution for perjury. There is also great danger of omissions and of misrepresentations, both by the declarant and the witness. To make a dying declaration admissible, there must be an expectation of impending and almost immediate death from the causes then operating. The authorities show that there must be *no hope* whatever."

Dying declarations, illustration of rule.

50. The circumstances under which, in trials for murder, statements by the person alleged to have been murdered as to the cause of his death are and are not admissible as evidence against the accused, may be illustrated by the following cases:—

(*a*.) At the time of making the statement the deceased had no hope of recovery, though his doctor had, and he lived ten days after making the statement. The statement was admitted as evidence (*a*).

(*b*.) The deceased, at the time of making the statement (which was written down), said something which was taken down thus: "I make the above statement with the fear of death before me, and with no hope of recovery." On the statement being read over, she corrected this to "with no hope *at present* of my recovery." She died thirteen hours afterwards. The statement was not admitted as evidence (*b*).

Statement forming part of *res gestæ*.

51. Passing to the second of the exceptions above referred to, the rule is, that where a statement is part of the *res gestæ* or transaction constituting the offence, then, whether it is or is not made in the presence of the accused, it is admissible as evidence against him. Words uttered during the continuance of the main action, whether by the active or by the passive party, though they cannot amount to acts for which the accused can be held responsible, yet may so qualify or explain the acts which they accompany, that they become essential for the due appreciation of them. Even where the accused is no longer present, if the words are the immediate and natural effect and consequence of continuing action on his part, though uttered out of his hearing, they may well be considered as part of the transaction.

Statements forming part of *res gestæ*: illustrations of rule.

52. There is no difficulty in understanding the general principle on which such statements are admitted, but there is sometimes great practical difficulty in determining how long the "transaction" ought to be considered as continuing, and what ought to be treated as "the immediate and natural effect of continuing action." Thus in a case (*c*), which has been the subject of much discussion, the facts appear to have been as follows:—A man is knocked down by a passing cab, and afterwards dies from the injuries thereby occasioned. Just after the accident, the prisoner, the driver of the cab, being then out of sight and out of hearing, a person who had not witnessed what had occurred comes up, and inquires into the matter, and the deceased makes a statement to him. The statement was admitted as evidence, though it did not come within the rule as to dying declarations, but the propriety of its admission has been much questioned.

(*a*) *R.* v. *Mosley*, 1 Moo. C. C. 97. This and the next case are cited as illustrations by Stephen, Dig. Ev., art. 26.

(*b*) *R.* v. *Jenkins*, L. R. 1 C. C. R. 187.

(*c*) *R.* v. *Foster*, 6 C. and P. 325.

Ch. VI.

Special rule in case of trials for rape and kindred offences.

53. In trials for rape, and kindred offences against women and girls, evidence is allowed to be given as to the fact that, shortly after the commission of the offence, the person against whom the offence was committed made a complaint about it, and as to the particular terms of the complaint so far as they relate to the charge. This is admissible for the purpose of showing that the conduct of the person against whom the offence was committed was consistent with the story told by her in the witness box (*a*).

Statements as to bodily or mental feeling admissible.

54. When it is intended to prove the bodily or mental feelings of a person at a particular time, evidence may be given of the usual expression of such feelings made by him at that time (*b*). Thus, in the Rugeley poisoning case, statements made by the deceased before his illness as to his state of health, and during his illness as to his symptoms, were admitted as evidence against the accused.

Declaration of deceased derson against interest.

55. Thirdly, a declaration, written or oral, made by a person since deceased against his pecuniary or proprietary interest is admissible (*c*). If it is admitted, the whole of the statement of which it forms part becomes admissible.

Statements made in course of business by person since deceased.

56. Fourthly a statement, written or oral, or an entry, which it is the duty of a person to make in the ordinary course of his business or professional employment, is admissible as evidence after his death, provided it is made contemporaneously with the act to which it relates. But it is only admissible to prove those facts which it was the duty of the person making the statement or entry to include in it, and of which he had personal knowledge. Thus, where on a trial for murder it appeared that the deceased, a constable, had, in the course of his duty, made, shortly before his death, a verbal statement to his superior officer as to where he was going, and what he was going to do, it was held that this statement, which was to the effect that the deceased was going to watch the accused, was admissible (*d*).

Admissibility of deposition.

57. It may sometimes happen that a material witness, who has given evidence at the preliminary inquiry, cannot attend at the trial. In proceedings before a civil court for indictable offences, provision is made for such cases by a statute (*e*) which enacts that the deposition may be read as evidence, on proof that the witness is dead, or so ill as not to be able to travel, that the deposition was taken in the presence of the accused person, that the accused then had a full opportunity of cross-examining the deponent, and further, on *primâ facie* evidence that the deposition is signed by the justice by or before whom it purports to be taken. This provision would be applicable where such depositions are required by a court-martial on a trial for an offence under s. 41 of the Army Act.

Summary of evidence, how far admissible.

58. There is no provision making the summary of evidence taken before a commanding officer, when an accused person is remanded for trial by court-martial, evidence under the same circumstances as depositions taken before magistrates. Accordingly, the summary cannot be admitted as evidence *of the facts* recorded by it except where the accused has pleaded guilty (*f*). But where a statement

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(*a*) *R.* v. *Osborne*, L.R. [1905] 1 K.B. 551.
(*b*) Stephen, Dig. Ev., art. 11.
(*c*) Stephen, Dig. Ev., art. 28.
(*d*) See Stephen, Dig. Ev., art. 27. Under 42 & 43 Vict., c. 11, where an entry is made in an ordinary banker's book in the usual and ordinary course of business, a copy of the entry is evidence of the entry and of the matters therein recorded.
(*e*) 11 & 12 Vict., c. 42, s. 17. See also Stephen, Dig. Ev., arts. 140, 141, and 30 & 31 Vict., c. 35, s. 6.
(*f*) See Rule 37.

recorded in the summary of evidence is put in issue before a court-martial, as, for example, where a discrepancy is alleged between the statement made in the summary and the evidence given before a court-martial ; or where the alleged wilful falsehood of such a statement becomes the occasion of a trial by a court-martial, the summary, if purporting to give the *verbatim* statement of the witness, may be given in evidence as confirmatory of the statement having been made.

Application of hearsay rule to documentary evidence.

59. The rule excluding hearsay evidence is, as has been seen, applicable to written or documentary, as well as to oral evidence. The statement of a person who is not called as a witness is none the less "hearsay" because it has been reduced to writing, and is offered in that form to the court. But in its application to documents of a public or official character, the rule is subject to very important qualifications. In the case of many such documents, the statements which they contain are, either under the general law, or under express statutory provisions, admissible as evidence to the matters to which they relate.

Recitals of public facts or statements, proclamations, &c.

60. Thus, by the general law, a statement of any fact of a public nature, if made in any recital in a public Act of Parliament, or in any Royal proclamation, or speech in opening Parliament, or in any address to the Crown of either House of Parliament, is admissible as evidence of that fact.

Entry in public record made in performance of duty.

61. So also an entry in any record, official book, or register kept in the British dominions, or at sea, or in a foreign country, made in proper time by any person in the discharge of any duty imposed on him by law, is admissible as evidence of the facts to which it relates.

Special provisions of Army Act.

62. And, under the special provisions of the Army Act, attestation papers, letters, returns, and documents respecting service, army lists, gazettes, warrants, and orders made in pursuance of the Act, records in regimental books, descriptive returns, and certificates of conviction or acquittal, are made evidence of the facts stated by them (*a*).

IV. Rule as to opinion.

63. The general rule is that the opinion or belief of a witness is not evidence. A witness must depose to the particular facts which he has seen, heard, or otherwise observed, and it is for the court to draw the necessary inference from these facts. Thus a witness may not on a trial for desertion characterise the absence of the accused as "desertion." This is a matter of inference, and is the point which it rests with the court to determine according to the evidence. The examination of the witness should be confined to the fact of the accused absenting himself, and to such other facts relevant to the charge as may be within the *knowledge* of the witness.

(*a*) See Army Act, ss. 163–165. Note the distinction between the provision making the copy evidence of the original, as an exception from the rule as to best evidence (*e.g.*, s. 163 (1) (*c*), as to copies of the King's Regulations, Royal Warrants, &c.), and the provisions which make the document, as an exception from the rule as to hearsay, evidence of the facts to which it relates ; also the distinction between a document being evidence of certain facts and (as a letter or record) evidence of the statement of those facts by some person.

The statements in the text, particularly in para. 59, as to the admission of documents, do not exclude the admission in evidence of documents which are part of the *res gestæ*. If, *e.g.*, a person is charged with embezzlement, the books which it was his duty to keep are admissible in evidence as part of the transaction under investigation, and the entries made by him or under his authority in those books will be evidence against him, as part of his conduct in relation to that transaction, and as raising presumptions which he must explain.

Ch. VI.

Exception in case of experts.

64. The chief exception to this rule relates to the evidence of experts. The opinion of an expert, that is to say, a person specially skilled in any science or art, is admissible as evidence on any point within the range of his special knowledge.

Medical experts.

65. Thus, in a poisoning case, a doctor may be asked as an expert whether, in his opinion, a particular poison produces particular symptoms. And, where lunacy is set up as a defence, an expert may be asked whether, in his opinion, the symptoms exhibited by the alleged lunatic commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of their acts, or of knowing that what they do is either wrong or contrary to law (*a*).

Experts in military science.

66. An officer may be asked, as an expert, to give his opinion on a point within his special military knowledge, but to make his opinion admissible his knowledge must be of a kind not possessed by the court generally. Thus, in a trial before a court-martial it is not proper to ask a witness for an opinion depending on military science generally, though it may be perfectly proper to put questions involving opinion, to an engineer as to the progress of an attack, or to an artillery officer as to the probable effect of his arm, if directed as assumed; since these matters, though having reference to military science, are not of such a nature as to be presumably known to each member of a court-martial.

Experts in handwriting.

67. With respect to handwriting, it has been specially provided by statute (*b*) that comparison of a disputed handwriting with any writing, proved to the satisfaction of the court to be genuine, is permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute. It must, however, be borne in mind that writing made for the special purpose of comparison is not unlikely to be disguised. The comparison may be made either by a person acquainted with th handwriting, or by an expert in handwriting, or by the court itself. A witness may be required to read writing or to write in the presence of the court.

Rule excluding opinion does not exclude evidence as to belief.

68. The rule which requires a witness to state what he knows, and not what he thinks, does not require him to depose to facts with an expression of certainty that excludes all doubt in his mind. For example, it is the constant practice to receive in evidence a witness's belief of the identity of a person or thing, or of the fact of a certain handwriting being the handwriting of a particular person, though he will not swear positively to those facts. It has been decided that a witness who falsely swears that he "thinks" or "believes," may be convicted of perjury equally with the man who swears positively to that which he knows to be untrue.

Opinion as to conduct, how far admissible.

69. In cases affecting the conduct of the accused, either as to deportment or language, it is not only proper, but often necessary to require a witness to declare his opinion, because that opinion may be derived from the impression of a combination of circumstances, occurring at the time referred to, difficult, if not impossible, fully to impart to the court. But it would be manifestly improper to draw the attention of a witness to facts, whether derived from

(*a*) See Stephen, Dig. Ev., art. 49, and cases there cited as illustrations.
(*b*) 28 & 29 Vict., c. 18, s. 8. Provided the witness is *in fact* skilled in the comparison of handwriting, it is immaterial that he is not a professional expert and immaterial how he acquired his skill. *R.* v. *Silverlock* [1894] 2 Q.B. 766.

his own testimony or from that of another witness, and to ask his opinion as to their accordance with military discipline or usage, because the court, being in possession of facts, are the only proper judges of their tendency. If the witness is asked a question the tendency of which is to make him express his opinion as to the general conduct of the person accused, or to give his judgment on the whole matter of the charge, he may, and should, decline to answer it.

Refreshing memory.

70. A witness may not read his evidence or refer to notes of evidence already given him, but he may while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court consider it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid if, when he read it, he knew it to be correct. Any writing so referred to must be produced and shown to the adverse party if he requires it, and that party may, if he pleases, cross-examine the witness upon it.

Notes referred to not evidence of themselves.

71. But a witness who refreshes his memory by reference to a writing must always swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the memorandum or entry at the time it was written. If on referring to a memorandum not made by himself he can neither recollect the fact nor recall his conviction as to the truth of the account or writing when the facts were fresh in his memory, so that he cannot speak as to the fact further than as finding it noted in a written entry, his testimony is objectionable, as hearsay.

(v.) *Admissions and Confessions.*

Rule as to admissions.

72. In criminal proceedings admissions by the accused of matters relating to an alleged offence as distinguished from actual confession of the offence itself are, strictly speaking, not receivable as evidence (*a*). It is, however, the practice of courts-martial to receive admissions made in open court as to collateral or comparatively unimportant facts, not involving criminal intent, which are not in dispute, but must be proved on the part either of the prosecution or of the defence. Thus, it is the practice to allow either party the option of admitting the authenticity of orders or letters, or the signature of a document, or the truth of a copy, put in by the other party, in cases where such writings are receivable when proved; or that certain details in an enumeration of stores, or in an account, are correctly stated; or that a promise or permission to a certain effect, or to a certain order, was actually given, or that a certain letter was sent or received on a given day; and so in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the court.

(*a*) This does not extend to acts done or things said by the accused as part of the *res gestæ*, which, until explained by him, raise a presumption of guilt; as, for instance, if he has charged himself in a book of account which it was his duty to keep with a sum of money, the book may be an admission that he received the money, and on proof that he made the entry, is admissible in evidence against him. A letter by a person charged with an offence apologising for the offence would ordinarily be a confession, but a letter admitting some of the facts alleged, but explaining them so as to show that there was no criminality in them, would ordinarily not amount to a confession.

Ch. VI.

Confession inadmissible only against person who makes it.

73. The general rule is, that a confession is not admissible as evidence against any person except the person who makes it (*a*). But a confession made by one accomplice in the presence of another is admissible against the latter to this extent, that, if it implicates him, his silence under the charge may be used against him, whilst on the other hand his prompt repudiation of the charge might tell in his favour.

Confession must be voluntary.

74. Before a confession can be received in evidence, it must be proved affirmatively that the confession was free and voluntary; and therefore the prosecutor must always prove the circumstances under which it was made.

Confession when not deemed voluntary.

75. A confession is not deemed to be voluntary, if it appears to the court to have been caused by any inducement, threat, or promise proceeding from a magistrate or other person in authority or concerned in the charge (*e.g.*, the prosecutor or the person having the custody of the accused), and having reference to the charge against the accused person, whether addressed to him directly or brought to his knowledge indirectly, and if, in the opinion of the court, the inducement, threat, or promise gave the accused person reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him. Thus, on a trial of A for murdering B, a handbill issued by the Secretar of State, promising a reward and pardon to any accomplice who would confess, was brought to the knowledge of A, who, under the influence of a hope of pardon, made a confession. It was held that the confession was not voluntary (*b*).

Confession when deemed voluntary.

76. But a confession is not involuntary merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceedings, or by inducements held out by a person having nothing to do with the apprehension, prosecution, or examination of the accused. Thus, A being charged with the murder of B, the chaplain of the gaol read the Commination Service to A, and exhorted him on religious grounds to confess his sins. A in consequence made a confession, and it was held that this confession was voluntary (*c*). So, again, a confession made by a prisoner to a gaoler in consequence of a promise by the gaoler that if the prisoner confessed he should be allowed to see his wife, would be admissible in evidence. In short, to make a confession involuntary, the inducement must have reference to the escape of the accused from the criminal charge against him, and must be made by some person having power to relieve him, wholly or partially, from the consequences of that charge.

Confession made after removal of impression produced by threat, &c., deemed voluntary.

77. A confession is deemed to be voluntary if, in the opinion of the court, it is shown to have been made after the complete removal of the impression produced by any inducement, threat, or promise which would otherwise render it involuntary. Thus, A is accused of the murder of B, and C, a magistrate, tries to induce A to confess by promising to try to get him a pardon if he does so. The Secretary of State informs C that no pardon can be granted,

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(*a*) Stephen, Dig. Ev., art. 21. As to when the statement of one mutineer or conspirator is admissible against another, see above, para. 26, *et seq.*

(*b*) *R.* v. *Boswell*, Car. and Marsh. 584, cited as an illustration by Stephen, Dig. Ev., art. 22. *R.* v. *Thompson* [1893] 2 Q.B., 12.

(*c*) *R.* v. *Gilham*, 1 Moo. C. C., 186, cited by Stephen, Dig. Ev., art. 22.

and this is communicated to A. After this A makes a statement. This is a voluntary confession (*a*).

Facts discovered through involuntary confession admissible.

78. Facts discovered in consequence of a confession improperly obtained, and so much of the confession as distinctly relates to those facts may be proved. Thus, A, accused of burglary, makes a confession to a policeman under an inducement which prevents it from being voluntary. Part of it is that A had thrown a lantern into a certain pond; the fact that he said so, and that the lantern was found in the pond in consequence, may be proved (*b*).

Confession made under promise of secrecy, &c.

79. It is, of course, improper to endeavour to extort a confession by fraud or under the promise of secrecy; but if a confession is otherwise admissible as evidence, it does not become inadmissible *merely* because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions whether put by a magistrate, officer, or private person, or because he was not warned that he was not bound to make the confession, and that evidence of it might be given against him.

Whole of confession must be given.

80. If a confession is given in evidence, the whole of it must be given, and not merely the parts disadvantageous to the accused person.

Confession made on oath or in previous proceedings.

81. Evidence amounting to a confession may be used as such against the person who gives it, though it was given on oath and though the proceeding in which it was given had reference to the same subject-matter as the proceeding in which it is to be used, and though the witness might have refused to answer the questions put to him; but if, after refusing to answer such questions, the witness is improperly compelled to answer, his answers are not a voluntary confession (*c*). Thus A was charged with maliciously wounding B. Before the magistrates, A had appeared as a witness for C, who was charged with the same offence. A's deposition was allowed to be used against him on his own trial (*d*). The same rule would appear to apply to statements made by a soldier charged before his commanding officer; but the proceedings of a court of inquiry, or any confession or statement made at a court of inquiry, cannot be used as evidence against an officer or soldier before a court-martial, unless the court-martial is one for the trial of an officer or soldier for wilfully giving false evidence before the court of inquiry (*e*).

(vi.) *Who may give Evidence.*

General rule as to competency of witnesses.

82. As a general rule, every person is a competent witness. Formerly persons were disqualified by crime or interest, or by being parties to the proceedings, but these disqualifications have now been removed by statute (*f*), and the circumstances which formerly created them do not affect the competency, though they may often affect the credibility, of a witness.

Competency of person charged.

83. Under the general law as it stood before the Act of 1898 came into force a person charged with an offence was not com-

(*a*) Stephen, Dig. Ev., art. 22, *R.* v. *Clewes*, 4 C. and P., 221.
(*b*) Stephen, Dig. Ev., art. 22, *R.* v. *Gould*, 9 C. and P., 364.
(*c*) Stephen, Dig. Ev., art. 23.
(*d*) *R.* v. *Chidley and Cummins*, 8 Cox, Crim. Ca., 365.
(*e*) Rule 124 (L).
(*f*) Lord Denman's Act, 6 & 7 Vict., c. 85; Lord Brougham's Act, 14 & 15 Vict., c. 99; Criminal Evidence Act, 1898, 61 and 62 Vict., c. 36. The last-mentioned Act, by s. 6, is not to apply to courts-martial till so applied by Rules of Procedure. It has so applied since the 16th January, 1899. See Rule 73 (B).

Ch. VI.

petent to give evidence on his own behalf, but many exceptions had been made to this rule by legislation, and the rule itself was finally abolished by the Criminal Evidence Act, 1898. Under the new law a person charged is a competent witness, but—

(i.) He can only give evidence for the defence; and,

(ii.) He can only give evidence if he himself applies to do so.

Rule as to persons jointly charged.

84. Under the law as it stood before 1898 persons jointly charged and being tried together were not competent to give evidence either for or against each other. Under the new law a person charged jointly with another is a competent witness, but only for the defence and not for the prosecution. If, therefore, one person charged applies to give evidence his cross-examination must not be conducted with a view to establish the guilt of the other.

If, therefore, it is thought desirable to use against one accused person the evidence of another who is being tried with him, the latter should be released, or a separate verdict of not guilty taken against him. An accused person so giving evidence is popularly said to turn King's evidence. If an accused person thinks that the evidence of one or more of the other persons proposed to be conjointly arraigned with him will be material to his defence, he should claim a separate trial (*a*).

Evidence of accomplices.

85. It follows from what has been stated that the evidence of an accomplice is admissible against his principal, and *vice versâ*, subject, if they are tried together, to what has been stated in the preceding paragraph. The evidence of an accomplice should always be received with great jealousy and caution. A conviction on the unsupported testimony of an accomplice may, in some cases, be strictly legal, but it is the practice to require it to be confirmed by unimpeachable testimony in some material part, and more especially as to his identification of the person or persons against whom his evidence may be received.

Competency of wife.

86. The wife of a person charged is now a competent witness, but, except in certain special cases:—

(i.) She can only give evidence for the defence; and,

(ii.) She can only give evidence if her husband applies that she should do so.

The special cases in which a wife can be called as a witness either for the prosecution or for the defence, and without the consent of the person charged, are where the accused is charged with an offence under Sections 48 and 52–55 of the Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), or under Section 12 or 16 of the Married Women's Property Act, 1882 (45 & 46 Vict., c. 75), or under the Criminal Law Amendment Act, 1885 (48 & 49 Vict., c. 69), or under the Prevention of Cruelty to Children Act 1904 (4 Edw. 7, c. 15) (*b*), and cases in which the wife is by common law a competent witness against her husband, *i.e.*, where the proceeding is against the husband for bodily injury or violence inflicted on his wife. The rule of exclusion extends only to a lawful wife. There is no ground for supposing that the wife of a prosecutor is an incompetent witness.

(*a*) See Rule 15.

(*b*) Offences against 5 Geo. IV, c. 83, and 8 & 9 Vict., c. 83 (desertion of wife, &c.) are not included in this list, as the sections do not apply to persons subject to military law. See Army Act, s. 145 (1).

Incompetency from idiotcy, &c.

87. A witness is incompetent if, in the opinion of the court, he is prevented by extreme youth (*a*), disease affecting his mind, or any other cause of the same kind, from recollecting the matter on which he is to testify, from understanding the questions put to him, from giving rational answers to those questions, or from knowing that he ought to speak the truth (*b*).

Deaf and dumb persons not incompetent.

88. A witness unable to speak or hear is not incompetent, but may give his evidence by writing or by signs, or in any other manner in which he can make it intelligible, but such writing must be written and such signs made in open court. Evidence so given is deemed to be oral evidence (*b*).

Religious belief immaterial as to competency.

89. The particular form of the religious belief of a witness, or his want of religious belief, does not affect his competency. If he takes an oath he may take it with such ceremonies and in such manner as makes it binding on his conscience (*c*). If he objects to take an oath on the ground that he has no religious belief, or that taking an oath is contrary to his religious belief, he may make a solemn affirmation (*d*).

Competency of member of court to give evidence.

90. A member of a court-martial is a competent witness in favour of the accused, and might, as such, be sworn to give evidence at any stage of the proceedings; but the Army Act and Rules of Procedure direct that a witness for the prosecution shall not sit on a court-martial for the trial of any person against whom he is a witness (*e*). A member of the court must not communicate privately to other members of the court any special knowledge which he has, or thinks that he has, of the guilt or innocence of the accused, or act on private grounds of belief. If he wishes to give evidence, he must be sworn as other witnesses and be subject to cross-examination.

Distinction between competency and credibility.

91. It will be seen that the effect of the successive enactments which have gradually removed the disqualifications attaching to various classes of witnesses has been to draw a distinction between the *competency* of a witness and his *credibility*. No person is disqualified on moral or religious grounds, but his character may be such as to throw grave doubts on the value of his evidence. No relationship, except to a limited extent that of husband and wife, excludes from giving evidence. The parent may be examined on the trial of the child, the child on that of the parent, master for or against servant, and servant for or against master. The relationship of the witness to the prosecutor or the accused in such cases may affect the credibility of the witness, but does not exclude his evidence.

(vii.) *Privilege of Witnesses.*

Person *competent* not always *compellable* to give evidence.

92. It by no means follows that, because a person is *competent* to give evidence, he is therefore *compellable* to do so. There are many cases in which a witness before a civil court may decline to answer a question or produce a document, and the like privileges are expressly extended by statute to witnesses before courts-martial (*f*).

(*a*) By the Criminal Law Amendment Act, 1885 (48 & 49 Vict., c. 69, s. 4), and the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 15, special provision is made for the reception of the unsworn evidence of a child in the case of certain offences against girls and children.

(*b*) Stephen, Dig. Ev., art. 107.

(*c*) Rules 30, 82 (C); and see 1 & 2 Vict., c. 105.

(*d*) 51 & 52 Vict., c. 46; Army Act, s. 52 (4), Rule 82.

(*e*) Army Act, s. 50 (3), Rules 19 (B) (ii) and 106 (D).

(*f*) See Army Act, s. 128, and Rule 75 (B).

Ch. VI.

Witness not to be compelled to criminate himself.

93. No one, except the accused himself when giving evidence on his own application, and as to the offence wherewith he is charged, is bound to answer a question if the answer would, in the opinion of the court, have a tendency to expose the witness, or the wife or husband of the witness, to any criminal charge, penalty, or forfeiture, which the court regards as reasonably likely to be preferred or sued for, or to any military punishment. Accordingly, an accomplice cannot be examined without his consent, but if an accomplice who has come forward to give evidence on a promise of pardon, or favourable consideration, refuses to give full and fair information, he renders himself liable to be convicted on his own confession. However, even accomplices in such circumstances are not required to answer on their cross-examination as to other offences.

Rules as to accused giving evidence.

93A. Where the accused offers himself as a witness he may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged. But he may not be asked, and if he is asked must not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any other offence, or is of bad character, unless—

(i.) The proof that he has committed or been convicted of the other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or,

(ii.) He has personally or by his advocate asked questions of the witnesses for the prosecution, with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or,

(iii.) He has given evidence against any other person charged with the same offence (*a*).

He may not be asked questions tending to criminate his wife. Evidence tending to show that the accused has been guilty of criminal acts other than those covered by the charge is not admissible, except on the issue whether the acts charged against the accused were designed or accidental, or except for the purpose of rebutting a defence otherwise open to him (*b*). The circumstances under which evidence of this kind is admissible are well illustrated by the following case (*c*). M. and his wife were charged with the wilful murder of an infant child. The evidence showed they had received the child from its mother on certain representations as to their willingness to adopt it, and upon payment of a sum inadequate for its support for more than a very limited period, and that the child's body had been found buried in the garden of a house occupied by them. It was held that evidence that the prisoners had received several other infants from their mothers on like representations and on like terms, and that bodies of infants had been found buried in a similar manner in the gardens of several houses occupied by the prisoners, was relevant to the issue which had to be tried by the jury. In such a case the person charged would be liable to be cross-examined as to the circumstances under which the bodies of the other infants came to be so buried.

(*a*) See Rule 80.
(*b*) See para 22, *supra*.
(*c*) *Makin* v. *Attorney-General for New South Wales*, L.R. [1894], A.C. 57.

Privilege does not extend to answers showing civil liability.

94. The privilege as to criminating answers does not cover answers merely tending to establish a civil liability. No one is excused from answering a question or producing a document only because the answer or document may establish or tend to establish that he owes a debt, or is otherwise liable to any civil suit, either at the instance of the crown or of any other person (*a*).

When privilege may be waived by witness.

95. The privilege of not answering for the above reasons is the privilege of the witness, and therefore he may waive it, and if he chooses to answer, his answer must be received in evidence, but the privilege mentioned in the following paragraph is for the protection of other parties, and cannot be waived except with their consent.

Evidence as to affairs of State.

96. Another class of privilege is based on considerations of public policy. No one can be compelled to give evidence relating to any affairs of State, or as to official communications between public officers upon public affairs, except with the permission of the officer at the head of the department concerned.

Privilege as to confidential reports and information.

97. On this principle, a confidential report, or letter, or official information of a confidential character, although it may refer to matters which a court-martial may have decided to be relevant to the inquiry before it, cannot be produced or disclosed except by consent of the superior authority ; and this consent is refused if the production or disclosure is considered detrimental to the public service. Proof of the refusal should be laid before the court by the examination of a witness, or by a written communication, read in open court, and attached to the proceedings.

Privilege as to proceedings of court of inquiry.

98. So also, the proceedings of a court of inquiry cannot be called for by courts-martial, nor witnesses examined as to their contents ; nor is any confession or statement made at a court of inquiry admissible against an officer or soldier before a court-martial. The only exception to this rule is in the case of a court-martial held for the trial of an officer or soldier for wilfully giving false evidence before the court of inquiry (*b*).

Information as to commission of offences.

99. Again, in cases in which the Government is immediately concerned, no witness can be compelled to answer any question the answer to which would tend to discover the names of persons by or to whom information was given as to the commission of offences. It is, as a rule, for the court to decide whether the permission of any such question would or would not, under the circumstances of the particular case, be injurious to the administration of justice (*c*).

Communications during marriage.

100. A husband is not compellable to disclose any communication made to him by his wife during the marriage ; and a wife is not compellable to disclose any communication made to her by her husband during the marriage (*d*).

Professional communications.

101. A legal adviser is not permitted, whether during or after the termination of his employment as such, unless with his client's express consent, to disclose any communication, oral or documentary, made to him *as such legal adviser*, by or on behalf of his client, during, in the course of, and for the purpose of his employment, or to disclose any advice given by him to his client during, in the course of, and for the purpose of such employment. But this protection does not extend to :—

1. Any such communication if made in furtherance of any criminal purpose ;

(*a*) 46 Geo. III, c. 37.
(*b*) See also para. 81 above, and Rule 124 (L).
(*c*) Stephen, Dig. Ev., art. 113.
(*d*) 16 & 17 Vict., c. 83, s. 3 ; 61 & 62 Vict., c. 36, s. 1 (*d*) ; and Rule 80 (4).

Ch. VI.

2. Any fact observed by a legal adviser in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether his attention was directed to such fact by or on behalf of his client or not; or
3. Any fact with which the legal adviser became acquainted otherwise than in his character as such.

The expression "legal adviser" includes barristers and solicitors, their clerks, and interpreters between them and their clients, and the person assisting the accused during trial before a court-martial (*a*).

Doctors and clergymen not privileged.

102. Medical men and clergymen are not privileged from the disclosure of communications made to them in professional confidence, but it is not usual to press for the disclosures of communications made to clergymen.

Questions to be entered on proceedings whether answered or not.

103. The questions, whether answered or not, should be entered on the proceedings. When the witness claims the privilege of not answering, it is for the court to decide whether the question is within any of the exceptions. Courts-martial may also in their discretion interpose by informing a witness, at the time when a question is put to him, that he is not bound to answer. Any such interposition, and any claim of privilege by the witness, and the fact whether the witness is required to answer or not, should be noted on the proceedings.

(viii.) *How evidence is to be given.*

Mode of giving evidence dealt with by Rules.

104. The mode in which evidence is to be given before courts-martial is fully dealt with in the Rules of Procedure, to which the following paragraphs must be taken as supplemental.

Points requiring attention of court.

105. It will be the duty of the court in every case to see that the rules of evidence are strictly conformed to. The following points will require special attention in relation to any evidence that may be tendered :—

(*a*) That it is relevant to the issue.
(*b*) That it is the best evidence procurable.
(*c*) That it is not within the rule rejecting hearsay evidence.
(*d*) That (except in the case of experts) it is not a mere expression of opinion.
(*e*) That if it is a confession or admission, it is legally admissible.
(*f*) That if it is a document, it is legally admissible and properly put in evidence (*b*).
(*g*) That no document or other thing is used for the purposes of the trial which has not been properly put in (*c*).
(*h*) That any witnesses called are legally competent to give evidence.
(*i*) That any document with which a witness proposes to refresh his memory is legally admissible for the purpose.
(*k*) That the examination of witnesses is fairly and properly conducted.

(*a*) Stephen, Dig. Ev., art. 115.
(*b*) A document is said to be "put in" when it is produced to the court, and, unless verification by a witness is unnecessary (para. 38), properly verified.
(*c*) This must, however, be taken subject to the qualification that for purposes of *identification*, &c., any document or thing may be shown to a witness before it has been formally proved and put in. See below, para. 110.

106. This last point requires a little more detailed notice. The examination of a witness by the person who calls him is called his examination, or direct examination, or examination-in-chief; and on this examination the question must be relevant to the issue, that is to say, must relate to the matters in issue at the trial. The court must, of course, in all cases see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege; and must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him.

Leading questions.

107. Accordingly a witness must not be asked in examination-in-chief leading questions on any material point, that is to say, questions suggesting the answer which the person putting the question wishes or expects to receive, or suggesting disputed facts, as to which the witness is to testify. For instance, a witness must not be asked, "Did the accused then go into the barrack-room?" but "What did the accused do next?" If it were not for this rule a favourable and dishonest witness might be made to give any evidence that is desired. On the other hand, it would be mere waste of time to enforce the rule where the questions asked are simply introductory and form no part of the real substance of the inquiry, or where they relate to matters which, though material, are not disputed. But where a question relates to a contested point, which is either directly conclusive of the matter in issue, or directly and proximately connected with it, the rule should nearly always be strictly enforced, and no question should be allowed in a form which directly or indirectly suggests to the witness the answer desired, or which, embodying a material fact, admits of a conclusive answer by a simple "Yes" or "No."

Test of what are leading questions.

108. Care must, however, be taken in enforcing this rule not to exclude questions which do not really suggest an answer, but merely direct the attention of the witness to the subject as to which he is questioned. It is often, indeed, extremely difficult in practice to determine whether or not a question is in a leading form, and in all such cases the real test should be whether or not the examination is being conducted fairly and with the object of eliciting the honest belief of the witness.

Examples of fair and unfair questions.

109. The following may be taken as examples of fair and unfair examination of a witness. Suppose a man to be charged with the murder of another by stabbing, the body having been found at the upper end of a certain street, and a witness to be called to speak to the circumstances under which the blow was struck. There would be no objection to ask the witness—

If he remembered the 12th August, and—

If he was in North Street about noon on that day.

These questions, though in a leading form, are merely introductory, and if the defence of the accused was that he had struck the blow, but that he had done it in self defence, there would be no objection to going a little further and asking—

Whether he saw the deceased and the accused there?

But from this point all leading questions should be avoided, and the examination should be continued in some such form as this:

In what part of the street were the accused and deceased when you first saw them?

How far were you from the accused and the deceased?

Tell us in your own words exactly what passed.

Ch. VI.

To ask, instead of the first question—

> Were they at the upper end of the street when you first saw them?

would be highly improper, as it might be very important in considering whether or not there had been a long quarrel or scuffle, to know whether they had moved far from the place where the witness first saw them to the place where the body was found. It would obviously be still more improper to ask,

> Did you see the accused go up stealthily behind the deceased and strike him a blow with a knife?

or any question of that character.

If, on the other hand, the defence set up were an *alibi*, it would be improper to ask directly after the introductory questions—

> Whether the witness saw the deceased and the accused there?

The questions in that event should rather be—

> Whether he saw anyone there?
>
> Whether he could identify them?
>
> Whether he can identify anyone in court as having been present?

though, finally, if an answer could not be got in any other way, the attention of the witness might be called to the accused, and he might be distinctly asked,

> "Whether he saw that person there?"

But this should not be done until the witness had said that he saw some persons there, and that he would know them again.

Rule as to directing attention to particular persons and things.

110. The rule in these cases is, that the attention of a witness who has alluded to any person or thing, may be called to a particular person or thing for the purpose of identification, and that the witness may be asked directly whether that is the person or thing to which he alluded; but in practice this should only be done after examination in the ordinary way has failed to elicit any distinct replies. When any article, such as a stick, belt, or document, is produced in court for the purpose of identification, the witness may be asked such questions as "Whether he recognises it," and "Whether he saw anything done with it, or to it;" but such a question as "Whether he saw A strike B with the stick or belt," or "Whether he saw A make an alteration in the document," should not be admitted. If, however, the interests of justice plainly require it, the court may allow this general rule to be relaxed. Thus where a witness is evidently labouring under a want of recollection, the court may in their discretion, according to the circumstances, allow him to be assisted by the suggestion, for instance, of a name, or of the contents of a lost document.

Exceptions in case of hostile witness.

111. Of course, if a person calls a witness and the witness appears to be directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule fails, and the court should allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in every respect as though he were a witness called by the other side, except that as he had been put forward as worthy of credit, by the person calling him, that person must not be permitted, either by cross-examination or by direct evidence, to impeach his credit by general evidence of bad character (*a*).

Rules as to cross-examination.

112. When the examination-in-chief is finished the opposite party cross-examines the witness. In cross-examination leading questions and irrelevant questions may be put, and must be answered, as the

(*a*) 28 & 29 Vict., c. 18, s 3.

cross-examining party is entitled to test the examination-in-chief by every means in his power ; and irrelevant questions are often put in cross-examination for the sole purpose of putting a witness who is supposed to have learnt up the story, off his guard. Questions also may be put on cross-examination which tend either to test the accuracy or credibility of the witness or to shake his credit, impeaching his motives or injuring his character ; though such questions cannot be put on the examination-in-chief or re-examination.

Further observations on cross-examination.

113. Nevertheless, questions should not be allowed which assume that facts have been proved which have not been proved, or that answers have been given contrary to the fact. Nor, though irrelevant questions may be asked, should a witness be pressed in cross-examination as to any facts, which, if admitted, would not affect the matter at issue or the credit of the witness. And if the person cross-examining intends to adduce evidence contradicting the evidence given by the witness, he should be required to put to the witness in cross-examination the substance of the evidence which he proposes to adduce, in order to give him an opportunity of retracting or explaining.

Further observations on cross-examination.

114. When a witness is under cross-examination he may be asked any questions which tend to test his accuracy, veracity, or credibility, or (except in the case of a witness originally called by the person cross-examining him) to shake his credit by injuring his character. But a witness may of course decline to answer a question as to which he is entitled to claim privilege, and the right of asking questions tending merely to discredit, a right which has sometimes been seriously abused in civil courts, is qualified in the case of trials before courts-martial by Rule 92 of the Rules of Procedure.

Exclusion of evidence to contradict answers as to questions testing veracity.

115. Evidence cannot be given to contradict the answer of any witness to a question which only tends to shake his credit by injuring his character, except :—

(i.) Where the witness is asked whether he has ever been convicted of any felony or misdemeanour and denies or refuses to answer (*a*) ;

(ii.) Where he is asked a question tending to show that he is not impartial ;

(iii.) Where he has previously made inconsistent statements ;

(iv.) Where he can be shown to be a notorious liar.

In the first two cases proof may be given of the truth of the facts suggested. The other two cases are dealt with in the following paragraphs.

Cross-examination as to previous statements.

116. A witness may be asked whether he has, on a previous occasion, made a statement relative to the issue and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not admit that he made such a statement, proof may be given that he did in fact make it. The summary of evidence may be used to prove any statement which the witness made, and which it is proposed to contradict, and evidence may be called to prove that the evidence of a witness, though consistent with the summary, is not consistent with the evidence given by him at the investigation before the commanding officer. Such a question may be put, even though the statement may have been in

(*a*) 28 & 29 Vict., c. 18. Such questions could not be put to an accused person giving evidence except in the cases mentioned in para. 93A.

Ch. VI.

writing (notwithstanding the rules as to documentary evidence), and even without the writing being shown to him or proved in the first instance; though it should be shown to him afterwards, and his attention called to those parts of the writing which are to be used to contradict him, as otherwise the contradictory proof cannot be given (*a*).

Impeaching credit of witnesses.

117. The credit of any witness may be impeached by the adverse party by the evidence of persons who swear that they, from their knowledge of the witness, believe him to be unworthy of credit on his oath. Such persons may not, on their examination-in-chief, give reasons for their belief, but they may be asked their reasons in cross-examination, and their answers cannot be contradicted. When the credit of a witness is so impeached, the party who called the witness may give evidence in reply to show that the witness is worthy of credit.

Rule as to re-examination.

118. At the conclusion of the cross-examination the person who called the witness may, if he pleases, re-examine him; but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the other side may further cross-examine upon it.

Discretion of court as to enforcing rules.

119. Speaking generally, the above rules should only be enforced in their full strictness in the case of counsel or skilled advocates or other persons who may be supposed to be thoroughly acquainted with the rules of evidence, and therefore may be presumed only to break the rules of evidence for the sake of obtaining an improper advantage. In other cases the court may allow considerable latitude, and should interfere only where the interests of justice plainly require it.

(*a*) 28 & 29 Vict., c. 18, ss. 4, 5.

CHAPTER VII.

OFFENCES PUNISHABLE BY ORDINARY LAW.

Introductory.

Liability of soldier to civil as well as military law.

1. The first forty sections of the Army Act specify the various military offences of which a person subject to military law may be guilty. The sections embrace not only offences against discipline, but also offences against the persons and property of soldiers. Nearly all the offences of which a soldier can be guilty as a soldier and as against another soldier are included in these sections.

A soldier, however, is not only a soldier but a citizen also, and as such is subject to the civil as well as to the military law. An act which constitutes an offence if committed by a civilian is none the less an offence if committed by a soldier, and a soldier not less than a civilian can be tried and punished for such an offence by the civil courts (*a*).

Jurisdiction of military courts over civil offences.

2. In order to give military courts complete jurisdiction over soldiers, those courts are authorised to try and punish soldiers for civil offences, namely, offences which, if committed in England, are punishable by the law of England.

They are not allowed to try the most serious offences (*b*)—treason, murder, manslaughter, treason-felony, or rape—if those offences can, with reasonable convenience, be tried by a civil court. They are, therefore, prohibited from trying any such offence if it is committed in the United Kingdom, or if it is committed anywhere else in the King's dominions, except Gibraltar, within a hundred miles from a place where the offender can be tried by a civil court, unless indeed the offence is committed on active service.

Subject to the above exceptions, a military court can try all civil offences of a soldier wherever committed.

Principles on which jurisdiction should be exercised.

3. But though this wide power of trial is given, it is not as a rule expedient to exercise the power universally.

Where troops are stationed at places having no available civil courts under British judges within a reasonable distance, or are stationed in a foreign country, and the only law to which the troops are subject is that administered by the military courts, it is necessary to try all offences committed by soldiers by military courts.

But in the United Kingdom, in most parts of India, and in most of the colonies, where there are regular civil courts close by, it is, as a general rule, inexpedient to try a civil offence by a military court, more especially if the offence is one which injured the property or person of a civilian, or if the civil authorities intimate a desire to bring the case before a civil court.

This general rule is, however, subject to qualifications The line dividing the military from the civil offence may be narrow. The offence may have been committed within the barracks or military lines. There may be a doubt whether the person affected by the

(*a*) Sections 41 (*b*), 162 (2), and ch. VIII.
(*b*) Section 41.

Ch. VII.

offence is or is not a civilian. The soldier may be one of a body of troops about to sail abroad. There may be reasons making the prompt infliction of punishment expedient. In any such case it may be desirable to try the offence by a military court.

There may be also considerations arising out of the importance of maintaining military discipline. If either offences of a particular kind or offences generally are rife in a corps or at a station, it may be necessary, for the sake of discipline, to try every offence, whether civil or military, by court-martial, so that the punishment may be prompt and the sentence exemplary.

The heinousness of an offence is also an element of consideration. A trifling offence, such as would, if tried before a civil court, be properly punishable by a small fine, may well be punished by the military court immediately, especially if the case is one in which stoppages may be ordered to make good damage occasioned by the offence (*a*). On the other hand, a more serious offence, especially one which would ordinarily be tried by a jury, had better be relegated to the civil court. So should any case where intricate questions of law are likely to arise, as, for instance, questions of obtaining goods or money by false pretences from civilians.

Scheme of the chapter.

4. Though, then, the cases involving civil offences which will come before courts martial will not be numerous, it is necessary to describe the offences which may come before them. It is the object of this chapter to do so briefly. No scientific classification of offences has been attempted, but the more common offences have been treated in greater detail than those which experience shows rarely, if ever, to come within the cognisance of courts martial (*b*).

Before proceeding to a description of the various offences it will be convenient to discuss, first, the punishments which may be awarded, and, secondly, the general principles as to criminal responsibility, principles, it must be remembered, which are applicable to military not less than to civil offences.

(i) *Punishments.*

Punishments.

5. Section 41 of the Army Act specifies the punishments which may be awarded for the most serious offences, treason, murder, manslaughter treason-felony and rape. With regard to every other civil offence, the effect of the section is to authorise courts-martial to award as a maximum punishment either, in the case of an officer cashiering, or in the case of a soldier two years' imprisonment, with or without hard labour, or the punishment which under the civil law may be awarded for the offence. This rule is, of course, subject to the general limitation on the powers of punishment of regimental and district courts-martial (*c*), and to the prohibition applicable to all courts-martial against awarding a period of

(*a*) See Section 138 (3).

(*b*) To those who wish for a more detailed knowledge of the criminal law of England the following authorities are recommended:—Russell on Crimes and Misdemeanours, Archbold's Pleadings and Evidence in Criminal Cases, Roscoe's Digest of the Law of Evidence in Criminal Cases, Stephen's Digest of Criminal Law, Stephen's General View of the Criminal Law, and the Report of the Criminal Code Bill Commission, 1879. A convenient summary of the law relating to each particular offence will be found in the Encyclopædia of the Laws of England (edited by Mr. A. W. Renton), under the proper heading.

(*c*) Army Act, Sections 47 (5), 48 (6). Under these provisions a regimental court-martial may not award a sentence of discharge with ignominy or in excess of detention for forty-two days. A district court-martial may award any punishment except death or penal servitude.

imprisonment exceeding two years (*a*). In the table at the end of this chapter will be found the punishments which a civil court can award in respect of each of the offences described in the chapter. A comparison of the various punishments will be a guide to the court as to the heinousness of each offence in the eye of the law. It must be remembered that each punishment specified in the table, as well as the alternative punishment of two years' imprisonment, is a maximum, and in awarding punishment for a civil offence a court-martial should be guided by exactly the same principles as those which should guide them in punishing military offences (*b*). Where a sentence of penal servitude is passed the term awarded must be not less than three years.

Other consequences of convictions.

6. Other consequences besides the punishments awarded by the court sometimes result from a conviction, consequences which it will be well to bear in mind when passing sentence. Thus every conviction for *treason* or *felony* (*c*) involves the consequence that the offender may be ordered to pay the whole or any part of the costs of the prosecution, and every conviction for *felony* involves the consequence that the offender may be ordered to pay any sum not exceeding £100 by way of compensation to any person who has suffered loss of property through his offence.

So also if the offender is sentenced on a charge of treason or felony to—

Death,
Penal servitude,
Imprisonment with hard labour for any period, or
Imprisonment without hard labour for more than one year,

he will forfeit any public office, and any pension or superannuation allowance payable out of any public funds, which he may then hold or be entitled to, unless he receives a free pardon within a limited time; he will also become incapable of holding any public office or employment in the future, until he receives a free pardon or has suffered his punishment, and been discharged from custody; and he will incur various other civil disabilities (*d*).

Again, if the offender is sentenced on a charge of treason or felony to death or penal servitude, he will be disabled from making contracts, from suing at law, and from charging or parting with his property until he is pardoned or has suffered his punishment and been discharged from custody; and an administrator may be appointed to take charge of his property until such pardon or discharge, or until he dies, or is made bankrupt.

(ii) *Responsibility for Crime.*

Criminal responsibility.

7. The general rule is that a person is responsible for the natural consequences of his acts. But there are many cases in which it would be obviously unfair to make a person criminally responsible for doing a particular act, though under ordinary circumstances such an act would undoubtedly be an offence. The following are the principal cases of this kind which it is necessary to mention here.

Children.

8. A child is considered to be incapable of committing an offence before the age of seven years; and any act of a child between the

(*a*) Army Act, s. 68 (2). Imprisonment is, of course, here used as distinct from penal servitude.
(*b*) See ch. V, paras. 80–88.
(*c*) As to which offences are felonies, see table at end of chapter.
(*d*) See also Army Act, s. 44 (11).

ages of seven and fourteen can only be held to be an offence if it is shown affirmatively that the child had sufficient capacity to know the nature and consequences of his act, and to appreciate that he was doing wrong.

Insane persons.

9. A person cannot be convicted on a criminal charge in respect of an act done by him while labouring under such unsoundness of mind as made him incapable of appreciating the nature and quality of the act he was doing, or that such an act was wrong. Thus, if a man kills another under the insane delusion that he is breaking a jar, he will not be criminally responsible.

Every person is, however, presumed to be sane and to be responsible for his acts until the contrary appears, and it must, therefore, be clearly established that the accused is brought within the terms of the exception as above laid down before he can have the benefit of it (*a*). Unless a person is brought strictly within the terms of the exception it is no excuse whatever to show that his mind is affected by disease. For instance, the fact that a person is under the delusion that his nose is made of glass will not in any way excuse him if he commits an offence, unless he can prove that the delusion had a connection with the offence.

It is immaterial whether the unsoundness of mind is due to natural imbecility or produced by disease, or whether the disease itself is due to the sufferer's own dissipation, as, for instance, in the case of *delirium tremens*.

Temporary intoxication.

10. If, however, the unsoundness of mind is the result of mere temporary intoxication from liquor or drugs, it will be no excuse if the intoxication is voluntary, but it will be an excuse if the intoxication is produced by fraud, or otherwise against the will of the patient. Even voluntary intoxication will often be an important fact in considering the intention with which an act was done where the intention is an essential part of the crime; for instance, if a person is accused of wounding another with intent to murder him, the fact that the accused was very drunk at the time ought to be taken into account in considering whether the intent is established; though even in such a case the intent may be proved by evidence of premeditation, or other facts.

Compulsion.

11. An act may also be excused if committed by a person acting in company with others, provided that he is compelled to act as he does by threats of death or serious injury, continued during the whole time that he so acts.

Necessity.

12. In extreme cases an act may sometimes be justified on the plea of necessity, if it is done by a person in order to avoid inevitable and irreparable evil to himself or those whom he is bound to protect, though, of course, the act must not be disproportionate to the end to be attained, nor must more be done than is absolutely necessary to attain that end. Thus if the captain of a steamer, without any fault on his part, finds himself in such a position that he must either change his course or run down a boat with 20 people in it, he is justified in changing his course, although by so doing he runs a risk of swamping a boat with two people in it.

Ignorance of law.

13. Ignorance of *law* is no defence to a criminal charge. Thus, if A, a foreigner unacquainted with the law of England, kills B in a duel fought in England, A's act is murder, although he may

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(*a*) When on the trial by court-martial of a person charged with an offence it appears that such person committed the offence, but was insane at the time of its commission, the court must find specially the fact of his insanity.—Army Act, s. 130 (2).

have supposed it to be lawful. But such ignorance may properly be taken into consideration in determining the amount of punishment to be awarded.

Ignorance of fact.

14. Ignorance of *fact* will very often be an excuse, *i.e.*, a person's conduct will, as a rule, be judged as though the facts which he honestly and on reasonable grounds believed to exist at the time of such conduct had been the actual facts. But this excuse will not avail a person if his ignorance proceeds from wilfulness or negligence. In some few cases (which are noticed below when the offences are described (*a*)) even an honest and reasonable belief will not protect a man, if he is actually mistaken, and a man therefore does the act at his peril.

Parties to offence.

15. Where a person has no excuse to prevent his being criminally responsible for the result of his actions, his responsibility will not be limited to the simple case where he is present, and actually commits an offence with his own hand. Thus, if a soldier negligently leaves a ball cartridge mixed with blank cartridges, he will be responsible if injury results.

Innocent agent.

16. Again, where a person does an act by means of an innocent agent, as if a soldier knowing a note to be forged induces a comrade, who does not know it to be forged, to get it changed, or if a soldier, knowing that a pair of boots do not belong to him, induces a comrade to steal them by representing that they were his property and not the property of the actual possessor, in both these cases the soldier, but not his comrade, is responsible.

Assisting in offence.

17. Similarly, if a person assists another in the commission of an offence he is responsible as though he had committed it himself; and even if such assistance is indirectly given, as, for instance, if two or three men go out together to commit a burglary, and one waits at the corner of the street to keep watch while the others commit the burglary, the watcher will be guilty of burglary equally with the others, though he never goes near the house. On the other hand, if the offence charged involves some special intent, it must be shown that the assistant was cognisant of the intentions of the person whom he assisted; thus, on a charge of wounding with intent to murder, it must be shown that an assistant not only assisted the principal offender in what he did, but also knew what his intention was, before the former can be convicted on the full charge.

Common intent.

18. If several persons go out with a common intent to execute some criminal purpose, each is responsible for every offence committed by any one of them in furtherance of that purpose, but not for any offence committed by another member of the party which is unconnected with the common purpose, unless he personally instigates or assists in its commission. Thus, if a police officer goes with an assistant to arrest A in a house and all the occupants of this house resist the arrest, and in the struggle the assistant is killed the occupants are responsible. But if two persons go out to commit theft and one unknown to the other puts a pistol in his pocket and shoots a man the other is not responsible.

Instigating an offence.

19. A person is in all cases fully responsible for any offence which is committed by another at his instigation; even though the offence may be committed in a different way from the one that he suggested, as, for instance, if a person were to instigate another

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(*a*) See paras. 37, 39.

Ch. VII.

to murder a man by shooting him, and the murderer stabbed the man instead, the instigator would still be responsible. Further, he is responsible for any other offence which may, and was likely to, result from such instigation, as, for instance, the murder in the course of a robbery which he had instigated. But a person will not be responsible for an offence which he may have instigated another to commit, if he countermanded its execution, and notice of the countermand was received by the person instigated before the commission of the offence (*a*): nor where he instigates one offence will he be responsible for the commission of another unconnected therewith.

Knowledge of intended offence.

20. Mere knowledge that a person is about to commit an offence, and even conduct influenced by such knowledge, will not make a person responsible for that offence unless he does something actively to encourage its commission; for instance, if a man knows that two others are going to fight a prize-fight, and acts as stake-holder, but takes no other part in the circumstances attending the fight, at which he is not present, and one of the prize-fighters is killed, the stake-holder will not be responsible for his death.

Accessory before the fact.

21. When a person is responsible for an offence under paras. 17, 18, and 19, he is equally responsible and liable to the same punishment as the principal offender. Such a person is sometimes called an accessory before the fact.

Accessory after the fact.

22. A person may in some cases incur criminal responsibility, even after an offence has been committed, if the offence is a *felony* (*b*), and he becomes what is called an accessory after the fact, *i.e.*, if he assists the felon to evade justice (knowing that he has committed a felony) either by comforting, hiding, or otherwise actively assisting him, or by opposing his apprehension, or rescuing him from arrest, or by voluntarily permitting the felon to escape from his custody, where the accessory is himself the custodian. The mere allowing a felon to escape, without giving him active assistance, will not make a person an accessory after the fact, except in the case above-mentioned, where the accessory is himself the custodian.

Attempt to commit offence.

23. An endeavour to commit or to procure the commission of an offence is in itself an offence and renders a person criminally responsible, even though the endeavour is unsuccessful (*c*).

A mere intention to commit an offence unaccompanied by acts will not amount to an actual "attempt," nor will acts themselves, if they are merely preparatory to the commission of the offence. For instance, if a man goes to Birmingham to buy dies to make bad money, the mere going there is not an attempt to make bad money. Some overt act must be done which is more than an intention or preparation, and which aims at but falls short of the complete offence; thus, if the man had not only gone to Birmingham, but had actually bought the dies, he would have been guilty of an attempt to make bad money.

It is not necessary that it should have been legally or physically possible for the offender to have committed the full offence.

Intention.

24. In some cases the intention with which an act is committed becomes essential; where this is the case, the intention may either

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(*a*) Of course, though the execution of the crime was countermanded, the instigator would still be liable to be prosecuted for the misdemeanour of inciting to commit an offence, though not for the offence itself.

(*b*) As to what offences are felonies, see Table at end of chapter.

(*c*) As to attempts to murder, see para. 54; and as to what amounts to an attempt to shoot, see para. 34.

be proved by independent evidence, as, for instance, by words proved to have been used by the offender or by a previous course of conduct (*a*), or may be presumed from the act itself, according to the maxim that a man intends the natural consequences of his own act. In other words, the mode of discovering a man's intention is to consider what were at the time of his act the natural consequences of that act. Thus, if A sets fire to B's mill, the intent of A to injure B is inferred as being a natural consequence of the act of A in setting fire to the mill.

Intention in this context means the immediate intention as distinguished from motive or ulterior intention.

If a man bound by law to perform any duty does an act which necessarily causes, or most probably will cause, a failure in the performance of that duty, he will be held in law to have intended to fail, and therefore to have wilfully failed, to perform that duty.

Thus, for example, if one soldier in charge of another who is in military custody leaves him in a public-house, and goes away to visit a friend elsewhere, and the soldier in custody escapes, the soldier in charge of him must be considered to have wilfully permitted him to escape, because the escape was the natural result of the act; but if there was no evidence of any deliberate act of the soldier contrary to his duty, or if the escape was due to mere ordinary carelessness in the course of the performance of the soldier's duty, then he could not be held wilfully to have permitted the escape.

Consent.

25. Generally speaking, a person will not be criminally responsible for an act affecting the person or property of another if done with that other's consent. This does not apply to cases of killing or maiming, except when the killing or maiming results from a surgical or some similar operation reasonably and properly performed for the sufferer (*b*). Thus, if one soldier with the consent or even at the request of another cuts off that other's forefinger with a view to enable him to obtain his discharge, the consent or request does not relieve the former of responsibility. The consent must be free and must not be extorted by fear of injury or given under a misapprehension of fact. Such a consent, or the consent of a lunatic, of a child under twelve, or of a person in a state of intoxication, will not relieve the person who does the act of responsibility if the act apart from the consent would constitute an offence.

Accident.

26. A person is not criminally responsible for the result of a pure accident which is not to be attributed in any way to any carelessness or negligence, or to an unlawful act on his part.

Thus if a woodcutter is lawfully cutting down a tree and the head of his axe flies off, or if a man is lawfully riding down a road and his horse is whipped by another person, and caused to start off, or if a man is lawfully shooting at game or any other object, and in any of these cases there result to a bystander injuries which cannot be attributed to negligence on the part of the woodcutter, rider, or shooter, as the case may be, he will not be responsible for the injuries caused.

On the other hand, if a person points a gun at another in sport and pulls the trigger without having good grounds for believing, or having taken any proper precautions to ascertain, that the gun was unloaded, he will be responsible, as the accident might clearly have

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(*a*) See ch. VI, paras. 22–24, and 93A.

(*b*) In cases of this kind the consent of the sufferer will be presumed if he is unable to give it (*e.g.*, if he is unconscious from the loss of blood).

Ch. VII.

been prevented if he had not been culpably negligent; but if a gunmaker showing a gun to a customer and having good reason to believe that it is unloaded, pulls the trigger and the gun is really loaded and shoots the customer, the gunmaker will not be responsible, even though he had not taken every possible means to ascertain whether the gun was or was not loaded.

In each of the above illustrations it will be noticed that it is assumed that the act from which the injuries resulted was not in itself an unlawful act. For if the act was in itself unlawful, as if the woodcutter was doing an unlawful and malicious injury to the property of another, if the rider was a horse thief riding away with a stolen horse, if the shooter was a poacher, or if the man presenting a loaded gun was assaulting the person shot, the offender would in each case be criminally responsible for the injuries caused. This qualification is, however, confined to the cases of acts which are in themselves *unlawful*, and not so because mere breaches of excise laws or similar regulations; for instance, if the shooter, instead of being a poacher, were merely shooting without a gun licence, this would not of itself render him criminally responsible.

Negligence.

27. If a person fails to take proper precautions when doing anything which is in its nature dangerous, he will be responsible though he had not the least intention of bringing about the consequences of his act (*a*). For instance, if a soldier lets off his rifle without taking the precautions proper under the particular circumstances and the bullet kills a man, the soldier will be responsible for his death.

(iii.) *Responsibility for the Use of Force.*

Use of force.

28. The general rule is that a person is criminally responsible for the use of force, but in many cases the use of force is justifiable. The amount of force which may be so used and the circumstances under which it may be used vary widely.

Amount of force to be used.

29. In some cases any amount of force may be used, even if it entails bodily injury or even death; in other cases any amount of force may be used provided that it is not used in a manner intended or likely to cause death or grievous bodily harm.

The general principle applicable to all cases is that *no more force* may be used in any case than the person using it believes, and has reasonable grounds for believing, to be necessary to effect the object in respect of which he is entitled to use force. So long as this principle is observed, a person is not responsible for the consequences which may result in any particular case from the use of any force which is not in excess of that allowed in the class of cases to which it belongs. Nor will a person be responsible if death accidentally results from the legitimate use of force.

Cases in which use of force is justifiable.

30. The most important cases in which the use of force is justifiable are cases relating to administration of justice, prevention of crime, self-defence, the defence of property, the preservation of discipline, and the defence of the realm.

A person acting as a ministerial officer in execution of the orders of some superior authority, and any person lawfully assisting him, may use force in obedience to the orders of the superior authority, if that authority when giving the order is acting as a court: that is to say, acting in a judicial capacity, in the exercise of some jurisdiction conferred by law.

(*a*) See also para. 31.

The general rule in such cases is that any duly authorised person is justified in using whatever force may be necessary in order to execute the lawful order of a court of competent authority, and in overcoming any violent resistance which may be made to the lawful use of such force, as, for instance, a police officer in executing a warrant of arrest. But such a person must not use such force as is either likely or intended to cause death or grievous bodily harm (unless he is violently resisted), except where he is specially required to do so by the order itself, or where the order is a warrant of arrest for treason, felony (*a*), or piracy, in which cases he may at once use whatever amount of force may be necessary. Should a person be unable to justify himself under the rule above stated, it will in general be no excuse for him to show that he acted under the orders of some superior civil or military authority. His justification will, in such cases, depend upon the same considerations as though he had acted entirely on his own responsibility; and the fact of his having received the orders will merely be of importance as a fact in the case which may throw light upon the state of his mind, as to reasonable belief, intent, or otherwise.

If a person believes on reasonable grounds that another is about to commit any treason or felony (*a*) by open force he is justified in using any amount of force in preventing the commission. Similarly, any amount of force may be used by an officer of justice to execute a warrant of arrest for treason or felony, provided in either case the object for which force is used cannot be otherwise accomplished.

If a person is lawfully called upon to assist a peace officer in the execution of his duty, he is bound to go to the officer's assistance, and will be justified in using force to the same extent as the officer himself.

The law respecting the use of force for the suppression of riots and breaches of the peace is dealt with in another part of this work (*b*).

A person may in all cases use any amount of force which is reasonably necessary for the defence of himself or his property, if he is not himself in the wrong (*c*).

A person who is in peaceable possession of property of any description is entitled to defend it against trespassers, and to use force for the purpose of removing them from his land, or of retaining or re-taking his goods from them; but he must not intentionally strike or hurt an ordinary trespasser unless he is resisted, in which case he may use such force as is reasonably necessary to overcome such resistance, though even in this case, unless himself assaulted and in danger, he must not intentionally inflict death or grievous bodily harm. If, however, the trespass is a serious one, as where a trespasser endeavours forcibly to break and enter a dwelling-house with the intention of committing an indictable offence therein, any amount of force may be used to prevent him; and if it is night, such force may be used even though the trespasser has really no such intention, if the person using the force reasonably believes that he has such an intention.

The law also permits force to be used for correction or for the maintenance of discipline. Thus a parent or schoolmaster may forcibly correct any child or pupil under his care. In all such

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(*a*) As to what offences are felonies, see Table at the end of the chapter.
(*b*) See ch. XIII.
(*c*) For an illustration of this, see ch. VIII, para. 97.

Ch. VII. cases the force used must be reasonable and not excessive (*a*), otherwise the person using the force will be fully responsible for the consequences.

Finally, the law permits the use of force against the enemies of the realm in the actual heat and exercise of war.

(iv.) *Responsibility for Acts of Omission.*

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31. A person is not ordinarily considered to cause injury to another by the mere omission of an act; thus, if a man sees another drowning and is able to save him by holding out his hand, but omits to do so, even *in the hope* that the other may be drowned, still he is not criminally responsible.

On the other hand, where the law considers that a person is bound to perform some particular act, he is held responsible if he omits to do so. For example, every person who has charge of another, *e.g.*, a lunatic, an invalid, or a prisoner, is bound to provide him with necessaries if he is so helpless as to be unable to provide himself: and if death results from a neglect of such duty, the person in charge will be responsible unless he can show some good excuse.

So, in the case of an animal known to be dangerous, the person in charge is bound to take such precautions as will safeguard the public from danger.

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32. Similarly, if a person undertakes to do any act the omission of which may endanger human life (as, for instance, warning persons from a range whilst firing is going on), and without lawful excuse omits to discharge that duty, he is responsible for the consequences. Again, if a person undertakes (except in cases of necessity) to administer surgical or medical treatment, or to do any other act which may be dangerous to human life, he is responsible if death results from a want of reasonable care and skill on his part. For instance, if a soldier were to undertake to cut off the trigger finger of another soldier and mortification set in, he would be responsible for the consequences of his act.

(v) *Assaults and Sexual Offences.*

ssault.

33. Assault in its simplest form consists of the use of force, either directly or indirectly, against a person without his consent.

The use of force, however slight, is sufficient, but it must be used with the intention to cause, or with the knowledge that it is likely to cause injury, fear, or annoyance to the other person.

The consent of the other person, in order to be an excuse, must be *bonâ fide* consent and not mere acquiescence (*b*).

Not only the actual use of such force, but any act or gesture which causes the other person to apprehend that force will be used, is sufficient to constitute the offence of assault. Thus, shaking a fist in a man's face or pointing a pistol at him, may be assaults.

A common assault, such as has been described above, is not a very serious offence, but if the assault is attended with aggravating circumstances it becomes far more serious, and if death results from the assault it becomes homicide.

(*a*) See case of Governor Wall, ch. VIII, paras. 92–94.
(*b*) See also para. 25.

Aggravated assaults.

34. The following are examples of aggravated assaults :—

(1) Assaults with intent to commit a felony.

(2) Assaults with intent to resist the lawful arrest or detention of a person.

(3) Assaults on a peace officer in the execution of his duty.

(4) Assaults occasioning actual bodily harm, *i.e.*, injury calculated to interfere with the health or comfort of the sufferer.

(5) Unlawful wounding, *i.e.*, inflicting grievous bodily harm upon another unlawfully and maliciously.

(6) Shooting or attempting to shoot (*a*) at another with the intent to do some grievous bodily harm to him, or to prevent the apprehension or detainer of a person.

Indecent assaults.

35. The most important cases of aggravated assaults are indecent assaults ; that is, assaults on a male or a female, accompanied with circumstances of indecency.

Rape.

36. Rape is the act of a man having carnal knowledge without her consent of a female who is not his wife (*b*).

Penetration is considered to constitute carnal knowledge ; it must therefore be proved that there was actual penetration by some part of the male organ or "res in re." The slightest penetration will be sufficient ; it is not necessary to prove that there was such penetration as would be sufficient to rupture the hymen. Whether there was an emission of semen or not is immaterial.

It is not an excuse that the woman was a common strumpet, or the concubine of the ravisher, if the offence was committed by force or against her will ; though proof of such facts is admissible, and is of course important in considering whether or not she is likely to have consented.

Consent, to be an excuse, must be actual consent, and not mere submission, and it must be voluntary, and not extorted by force or fear of immediate bodily harm (*c*). Thus, if an idiot submits to a man's having connection with her without actually permitting it, this is no consent, but if she actually permits the act, though from mere sexual instinct, and without really understanding its nature, this is a sufficient consent, and therefore the man is not guilty of rape (*d*). It is no excuse that the woman consented at first or that she consented after the fact, if the offence was actually committed by force or against her will, at the time of the connection.

A boy under the age of fourteen is conclusively presumed to be incapable of having carnal knowledge, and evidence cannot be received to show that he is capable in point of fact. He may, however, be convicted of an indecent assault, and may, if he has aided another person to commit rape, be convicted of rape.

Carnal knowledge of a child.

37. Carnal knowledge (*e*) of a girl under the age of sixteen is an offence even though the girl consents (*f*).

If the girl is over thirteen it is a sufficient defence to show that the accused had reasonable cause to believe that the girl was over

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(*a*) A man attempts to shoot if he does any act (such as pulling out a loaded pistol, pointing it at a person, or fumbling with the trigger) from which it might be inferred that he intended to discharge it. See also para. 23.

(*b*) Though a husband cannot himself commit rape on his wife, he may be convicted of rape if he assists another person to commit rape on her.

(*c*) See also para. 25.

(*d*) Though not guilty of rape, he is guilty of an offence punishable with two years' imprisonment, if at the time he knew she was an idiot or imbecile.

(*e*) For definition, see para. 36.

(*f*) Of course, if the child does not consent the offence becomes rape.

Ch. VII.

sixteen. The prosecution for the offence must be commenced within six months from the commission of the offence.

If the girl is under thirteen, it is no excuse, whether the offence has been committed or only attempted, that the offender believed that the girl was above the specified age, if she was really below it.

If the girl herself or any other child of tender years tendered as a witness does not understand the nature of an oath, their evidence may be received though not on oath, if the court is of opinion that the girl or child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, but no person may be convicted in any such case unless such unsworn evidence is corroborated by some other material evidence in support of it implicating the accused ; and the witness will be liable to be punished for perjury for giving false evidence exactly as if he or she had been sworn.

It is also an offence for any person who is the owner or occupier of any premises of which he has the control or management, to induce or knowingly to suffer any girl under sixteen to resort to or be on the premises for the purpose of being carnally known by a man. It is a sufficient defence to show that the accused had reasonable grounds to believe that the girl was sixteen or over.

Procuring girl to become a prostitute, &c.

38. It is an offence by threats or intimidation to procure any woman or girl to have any unlawful carnal connection within or without the King's dominions.

Whoever takes away or detains any woman, of whatever age, *against her will by force* with the intention that she may be known by himself or any one else, is guilty of an offence (*a*).

Abduction.

39. It is an offence to take, or cause to be taken, out of the possession and against the will of a person who has lawful charge of her—

(1.) An unmarried girl under the age of sixteen.
(2.) An unmarried girl under the age of eighteen, with the intent that she may be carnally known by a man.

To constitute the former of these offences it is immaterial whether the girl consents, and whether the taking is permanent or temporary, provided that she is taken under the charge of the offender and out of the control of the person who has lawful charge of her. Thus, if a man persuades a girl under sixteen to leave her father's house and sleep one or more nights with him, or if a man, at the request of a girl whom he has seduced, elopes with her, he has been guilty of the offence.

In the case of the second offence, but not of the first, it is a sufficient excuse to show that the accused had reasonable cause to believe that the girl was over the specified age.

In either case it is necessary for the prosecution to prove that the offender had reason to believe that the girl was in the charge of some one.

It is no excuse that the guardian consented if the consent was obtained by fraud.

If two or more persons agree to try to induce a woman to commit adultery or fornication, or to take any woman from the lawful custody of her parents in order to marry her to any person without the parents' consent, each of them is guilty of an offence (*b*).

(*a*) There are also special provisions as to similar offences where the woman possesses property.
(*b*) As to consent, see para. 25.

Procuring abortion.

40. If a person intending to procure the miscarriage of a woman, *whether or not she is actually with child*, unlawfully (*a*) causes her to take any poison or other noxious thing, or uses any instrument or other means with that intent, he is guilty of an offence.

The supplying of a poison, noxious thing, or instruments, with the intent that it or they should be used for the purpose of procuring a miscarriage, is also an offence.

Sodomy.

41. The offence of sodomy is when a male has carnal knowledge (*b*) of an animal or has carnal knowledge of a human being "per anum."

A person over the age of fourteen allowing himself or herself to be known in this manner is guilty of the same offence.

Acts of indecency.

42. It is an offence for a male person, either in *public or private*, to commit, or to be a party to, the commission of any act of gross indecency with another male person; or to procure the commission of any such act.

It is also an offence to do any grossly indecent act in a public place in the presence of two or more persons, or to publicly expose the person, or exhibit any disgusting object.

It is further an offence to sell or expose for sale or view any obscene book, print, picture, or other indecent exhibition.

Disorderly houses.

43. The keeping of a disorderly house, that is, a common brothel, a common gaming house or a common betting house, is an offence.

Dangerous act.

44. The doing of a dangerous act with a criminal intention is itself an offence. The following are instances of such offences:—

(1.) The use of explosives with the intention of causing injury, whether or not an explosion actually takes place or any injury is caused.

(2.) Unlawfully causing another to take poison, or any other noxious thing, so as to cause him grievous bodily harm, or with the intent that he may be injured or annoyed.

In a few cases the doing of a dangerous thing, even without any criminal intention, is an offence, if injury or danger is actually caused. For instance, the causing of bodily harm to a person by furious driving or racing, or other wilful misconduct, or by wilful neglect, on the part of the person in charge of a vehicle (*c*). The offence is, of course, aggravated if a criminal intention is also present.

(vi) *Offences against Children and Servants.*

Ill-treatment of children.

45. If a person over sixteen years old, who has the care of a child under sixteen years old, wilfully assaults, ill-treats, neglects, abandons, or exposes the child, or causes it to be so treated, in a manner likely to cause the child unnecessary suffering or injury to health, he is guilty of an offence.

The ill-treatment of the child must be wilful.

Injury to health includes mental derangement.

The wife of the accused is in this case a *competent*, but not a *compellable*, witness either for the *prosecution or the defence*.

Abandonment of children.

46. It is a more serious offence to abandon or expose a child under two, so that its life is endangered, or its health is or is likely to be permanently injured.

Concealment of birth.

47. A person who endeavours to conceal the birth of a child by a secret disposition of its dead body is guilty of an offence.

(*a*) Medical treatment rendered necessary by the woman's state of health, is of course, not unlawful.

(*b*) See definition, para. 36.

(*c*) See also para. 32.

Ch. VII.

It is immaterial whether the child died before, during, or after birth.

Neglect of servants.

48. If a person, legally liable as a master to provide necessary food, clothing or lodging for a servant, wilfully and without lawful excuse refuses or neglects to do so, so that the life of the servant is endangered, or his health is or is likely to be permanently injured, he is guilty of an offence.

The offence must be wilful *and* without legal excuse.

There is no limit as to the age of the servant.

(vii) *Homicide.*

Homicide.

49. If the death of a human being results from any action of any person, that person is said to have committed homicide.

A person is criminally responsible for homicide unless he can show some legal excuse; the consent of the person killed is no excuse (*a*).

Death must result, either directly or indirectly, from the act. Whether it does so or not must depend on the circumstances of the case, but if the death occurs more than a year and a day after the act, the law presumes that death did not result from the act but from some other cause, and the accused cannot be made responsible.

Further, a person is not responsible for causing death unless death naturally results from his conduct; as for instance, if a person wounds another dangerously, and that other dies, whether from neglect of proper treatment, or from improper treatment applied in good faith for the purpose of effecting a cure. Or if the wound is not dangerous in itself, but is rendered so by improper treatment, the person causing the injury is not responsible for causing death.

The death caused must be that of a human being. A child is considered to become a human being as soon as it has wholly proceeded in a living state from the body of its mother, and has an independent circulation, whether it has breathed or not, and whether the umbilical cord has or has not been severed; and a person is responsible for killing such a child, though the injuries of which it dies were inflicted by him before or during birth.

A person is guilty of causing death even if he merely accelerated the other's death, and it is no excuse that the person killed must have died very shortly from some other cause.

The fact that the blame is shared by another will not relieve a person contributing to the death from responsibility. Thus, if two drivers are illegally racing their carts along a high road, and one or both of the carts run over a drunken man and kill him, each driver is responsible for having caused the death.

Murder.

50. If a person has unlawfully caused death by conduct which was intended to cause death or grievous bodily harm to *some* person, or even by conduct which any reasonable man must have known would be likely to cause death or grievous bodily harm to some person, whatever the intention of the offender may have been, he is guilty of murder.

It is immaterial whether the person intended to be killed or injured is the person actually killed or some other person.

If a person is proved to have killed another, the law presumes *primâ facie* that he is guilty of murder. It will be on the accused to prove such facts as may reduce the offence to manslaughter, or excuse him from all criminal responsibility.

It must not be supposed that the offence is not murder unless the

(*a*) As to when the use of force resulting, or possibly resulting, in death is justifiable, see para. 30.

offender has deliberately intended to kill the person who is killed. This is one kind of murder, and the most usual kind, but there are many others.

A person is also guilty of murder—

(1.) If he causes death by any act done with the intention of committing any felony (*a*), and the act is known to be dangerous to life and likely in itself to cause death, for instance, if a burglar shoots at a dog and kills a man, or if a woman dies from the effects of being treated with a view to procure abortion ; and

(2.) If he unlawfully resists and kills any person who is lawfully endeavouring to execute the duties of an officer of justice, or the orders of some civil or military authority, provided that the offender has sufficient notice of the capacity in which the person killed is acting.

Letters threatening to murder.

51. Sending a letter threatening to murder, and even the delivery of such a letter, knowing its contents, is an offence.

Man-slaughter.

52. It may be taken generally, that in all cases where a killing cannot be justified, if it does not amount to murder, it is man-slaughter, and a person charged with murder can be convicted of manslaughter.

For instance, an act of negligence which results in death, if the act is not such that a reasonable man must have known that it would be likely to cause death or injury to some one, would render the person guilty of manslaughter, not of murder.

Again, the offence is manslaughter if the act from which death results was committed under the influence of passion arising from extreme provocation.

But it must be distinctly understood that no person is considered to give provocation to an offender merely by doing that which he has a legal right to do, or which the offender has incited him to do with the express purpose of providing himself with an excuse.

The provocation must also be great, that is to say, practically speaking, such as might reasonably be expected to put an ordinary person not of an exceptionally passionate disposition into such a passion that he would lose his power of self-control.

Gestures or injuries to property, or breaches of contract, or slight blows unaccompanied by special insult, are not considered a sufficient provocation.

Mere words, again, are not considered to afford sufficient provocation, except, perhaps, in some extreme cases. Where, however, words are accompanied by a blow, though a slight one, the two may be taken into account together in estimating whether the provocation is sufficient.

Test of sufficiency of provocation.

53. It must be clearly established in all cases where provocation is put forward as an excuse, that *at the time* when the crime was committed the offender was actually so completely under the influence of passion arising from the provocation, that he was *at that moment* deprived of the power of self-control ; and with this view it will be necessary to consider carefully the manner in which the crime was committed, the length of the interval between the provocation and the killing, the conduct of the offender during that interval, and all other circumstances tending to show his state of mind.

Attempt to murder.

54. Attempts to murder (*b*) are only one degree less criminal

(*a*) As to what offences are felonies, see Table at end of chapter.
(*b*) As to what amounts to an attempt, see para. 23.

Ch. VII.

than murder itself, and any person doing or attempting to do any act with intent to commit murder is guilty of an offence.

The act or attempt alleged, for instance, a wounding or stabbing, an attempt to fire a pistol (*a*) which does not go off, or any similar act or attempt, must be laid in this charge and proved as laid.

It must also be proved that the accused intended thereby to commit murder, which intent may be gathered from the nature of the act itself, or may be proved by other evidence, as for instance, by threats and words proved to have been used by the accused (*b*).

Conspiracy to murder.

55. It is an offence to conspire with or endeavour to persuade or propose to any other person to murder a third party, whether a subject of the King or not, and this even though no overt act is done or attempted.

(viii) *Theft and the Cognate Offences.*

Theft.

56. Theft may be described as the fraudulent taking of any movable property out of the possession of any person without that person's consent, with the intention of permanently depriving that person of the property.

In the consideration of a charge of theft the following points must be borne in mind :—

The property must be taken fraudulently, that is, without any colour of right. If it is taken under the supposition, honestly entertained, that the taker has an immediate right to possession (*c*) the taking is not fraudulent, and there is no theft.

The fraudulent intention must exist at the time of the taking. If the taking is innocent, a subsequent fraudulent misappropriation of the property will not constitute theft (*d*).

The property must be taken with the intention of permanently depriving the possessor of it. Whether such an intention existed is a question to be decided according to the inference to be drawn from the facts of the case.

The taking must be without the consent of the possessor. Consent will not be an excuse if extorted by force or fraud (*e*).

But if not only the possession of, but also the property in, any goods (*f*) is obtained by fraud, the offence committed is not theft, but obtaining goods under false pretences, an offence which is dealt with below (*g*).

The property must be movable property ; anything attached to the ground, such as trees, or any part of a tree, corn, grass, and the like, is not the subject of theft (*h*).

The smallest amount of moving, so long as there is a severance of the property from the possession of the person from whom

(*a*) As to what amounts to an attempt to fire a pistol, see note (*a*) p. 95.

(*b*) Attempts to commit suicide do not amount to attempts to commit murder ; such attempts should be dealt with under s. 38 (2) of the Army Act.

(*c*) Thus a person who has pawned his watch can steal the watch from the pawnbroker, because he has no right to possession until he has redeemed it.

(*d*) But see as to theft by a bailee, p. 101, note (*a*).

(*e*) See also para. 25.

(*f*) The property in the goods is obtained if the person obtaining them becomes the owner. Thus if a person sells goods, the property in the goods passes to the purchaser ; if he pawns them, the pawnbroker obtains the possession of, but not the property in, the goods.

(*g*) Para. 63.

(*h*) At common law many other things were not the subject of theft ; see the list of these things, and the statutory modification of that list in note (*a*) p. 103. The only difference, so far as the offence of theft is concerned, between theft of a thing a subject of theft at common law, and of a thing a subject of theft by statute, lies in the amount of punishment that may be awarded (as to which see Table at the end of the chapter).

it is taken, is sufficient to constitute a taking. Thus, taking goods out of a box and laying them on the floor is sufficient to constitute theft if the other elements of theft exist. The line between what is and what is not a sufficient taking is extremely fine, and if there is any doubt as to whether the taking is sufficient it will be well to convict of an attempt to steal only.

Finally, there must be deprivation of possession. It does not matter whether the possession is rightful or wrongful. A thing can be stolen from a thief who has himself stolen it, not less than from the rightful owner of the thing. A person cannot steal a thing which is in his own possession (*a*), or a thing which is not in the possession of any one (*b*).

Possession of lost property and possession by servants.

57. In considering the question of possession, two things must be borne in mind :—(1) That a thing which is lost, in the eye of the law, remains, unless abandoned, in the possession of the loser, and (2) that possession by a servant of anything on behalf of his master is considered to be the possession of the master or the possession of the servant according to the circumstances under which the servant originally received it. If, for instance, a servant is given the custody of anything by his master, or by a fellow-servant who has been given the custody of it by his master, the servant will have no real possession of the thing, and the possession will remain in the master. Therefore any fraudulent misappropriation of the thing by the servant will be theft. If, however, a servant receives anything from a third person on his master's account, then the servant will have possession of the thing and the master will have no possession until the servant does some act by which the possession is transferred from the servant to the master.

Stealing lost property.

58. From the first of the above considerations it follows that a person finding property which has been lost, can steal it, though apparently in the possession of no one, if the other necessary elements of theft (*e.g.*, a fraudulent intention to appropriate) are present at the time of the finding. This rule is subject to the exception that if the finder, at the time, does not know, and has no reasonable grounds to believe that he can find out, who the owner is, the taking possession is considered to be innocent, and no subsequent misappropriation of it by the finder can amount to theft. Thus, if a soldier finds a sovereign lying about in barracks and immediately appropriates it, this would be theft, but if he found the sovereign lying in a street outside barracks this would not be theft, even though he afterwards discovered that it belonged to a comrade and did not mention that he had found it and kept it for his own use.

Embezzlement.

59. From the second consideration it follows that a servant can steal a thing, the custody of which he has received from his master, but not a thing which he has received from a third person on behalf of his master. But though not guilty of theft in the latter case, the servant is guilty of an offence closely resembling theft and which is called embezzlement. This offence consists in the fraudulent appropriation by a servant of property belonging to his master of which he has possession under circumstances which constitute such possession the possession of the servant and not of the master.

(*a*) Theft by a bailee is a statutory exception to this rule. Where a person (called the bailor) has entrusted an article to the care of another person (called the bailee), the bailee, by fraudulently misappropriating the article, becomes guilty of the offence of theft.

(*b*) See also ss. 17 and 18 (4) of the Army Act, and notes.

Ch. VII.

By servant is meant a person who is bound not merely to carry out the instructions of his employer as to what to do, but also as to how and when to do it. The employment may be either general, or for a specified time, or for the performance of a single act.

On a charge of embezzlement the fraudulent misappropriation of the property may be inferred either from the fact that the accused person has not handed it over or accounted for it in the ordinary course, or from the fact of his having falsely accounted for it, or from the fact that on an examination of his accounts there is a general deficiency which he is unable to explain, or from the fact of his having absconded, or in any similar way. It must, however, be remembered that none of these facts in itself constitutes the offence of embezzlement; each is *evidence* only of fraudulent misappropriation.

Conviction for theft on charge of embezzlement and *vice versâ*.

60. If, on a charge of embezzlement, it turns out that the offence is in fact theft and not embezzlement, or if on a charge of theft it appears that the offence is really embezzlement, the accused is not entitled to be acquitted, but may be convicted of the alternative offence on the charge which has been preferred. As a natural sequence to this provision, if a person is once acquitted of embezzlement or theft, he cannot be afterwards charged with the alternative offence of theft or embezzlement on the same facts (*a*).

Embezzlement by persons in public service.

61. A somewhat similar offence is where a person who is employed in the public service fraudulently converts any chattel, money, or security of which he has the control by virtue of such appointment, to any purpose other than the public service.

Obtaining goods by false pretences.

62. As has been said (para. 56), when a person obtains not only the possession of but also the property in goods by fraud, the offence is not theft but obtaining goods under false pretences. The elements constituting the offence of obtaining goods under false pretences are very similar to those constituting theft.

There must have been an intention of depriving the owner permanently of the thing obtained, and the intention must have been fraudulent, though there need not have been an intention to defraud any particular person.

The goods must have been obtained either directly or indirectly by the pretence, that is to say, they would not have been obtained but for the pretence. If the person from whom the goods are obtained is not deceived by the pretence, but knows it to be false, the goods are not obtained by false pretences, but in such a case the person making the false statement may be convicted of attempting to obtain the goods by false pretences.

The false pretence must be a false representation, express or implied, as to the past or present existence of some fact; a mere promise as to future conduct, or representations as to future expectations are not sufficient. For instance, the giving a cheque in exchange for goods is a representation that the drawer has authority to draw upon the bank for the amount of the cheque, and if he knows that this is not so, it is a legal false pretence. But representations of future expectations, unless they are representations of existing facts, do not constitute a false pretence, and obtaining goods on credit by means of such representations is not obtaining goods on false pretences.

The false pretence may be made in any way, either by words, by writing, or by conduct; for instance, if a person, not being an officer in the army, represents himself to be so by wearing an officer's

(*a*) As to embezzlement under the Army Act, see ss. 17, 18 (4), 56 (1) (2).

uniform, and thus obtains goods from a tradesman : this is false pretence by conduct.

It is no excuse to say that a person of common prudence could easily have found out that the pretence was untrue, nor to say that the existence of the alleged fact was impossible, or that it was intended to make compensation for the goods in the future.

An article cannot be the subject of the offence of obtaining goods by false pretences unless it could have been the subject of theft at common law (*a*).

Conviction of theft on charge of obtaining by false pretences.

63. If a person is charged with obtaining anything by false pretences, and the offence turns out to be really theft, the prisoner may be convicted *on that charge* of the theft ; and therefore if a person has once been acquitted of obtaining anything by false pretences, he cannot afterwards be charged with stealing on the same facts. A person cannot, however, be convicted of obtaining goods by false pretences on a charge of theft, and he may therefore be charged with obtaining the thing by false pretences on the same facts on which he may have been acquitted when charged with theft.

Robbery.

64. Theft of a thing on the body or in the immediate possession of the person from whom it is taken, if accompanied by violence or threats of injury, is called robbery.

The threats must be threats of injury to the person, property, or reputation of the person robbed, and must be such as would reasonably induce a fear of injury.

The violence or threats must be intentionally used for the purpose of overcoming or preventing resistance, or of extorting the thing stolen. Violence used merely for the purpose of obtaining possession of the thing, such as snatching a watch out of a pocket, is not sufficient to constitute robbery.

An assault with intent to rob is a similar offence ; and a person charged with robbery may be convicted of an assault with intent to rob.

Extortion.

65. Where the thing is not on the body or in the immediate possession of a person and violence or threats are used for the purpose of extorting it from him the offence is called extortion.

A somewhat similar offence is when threats or violence are used to induce a person to execute, make, accept, endorse, alter, or destroy any valuable security, with the intention of injuring or defrauding that or any other person.

Breaking and entering.

Burglary.

66. Offences closely allied to thefts and robbery are those of entering or breaking and entering a house with the intention of committing a felony (*b*). The latter offence if the house is a dwelling-house (*c*) and the entering and breaking is at night (*d*) is termed burglary.

There must in every case be an intention to commit a felony in the house entered.

(*a*) The following classes of things are not the subject of theft at common law :—

(1) Things abandoned by the owner.
(2) Land, and things permanently attached to land.
(3) Title deeds, bonds, &c.
(4) Wild animals (including game).
(5) Base animals, such as dogs, ferrets, &c.

Of these, plants and shrubs growing in gardens, &c., title deeds, all animals which are usually kept in confinement, including dogs, have been made the subject of theft by statute.

(*b*) As to what offences are felonies, see Table at the end of the chapter.

(*c*) A dwelling-house is any permanent building or separate part thereof in which the owner or tenant, or any one with their consent, habitually sleeps at night.

(*d*) Night means the interval between nine at night and six in the morning.

Ch. VII.

A person is considered to "enter" a house as soon as he introduces into the house any part of his body or any instrument held in his hand for the purpose of intimidating any one in the house or of removing any goods; the introduction into the house of a housebreaking tool is not sufficient.

A person is considered to "break" a house—

(*a*) if he breaks any part, internal or external, of the building itself, or
(*b*) if he opens by any means whatever (*a*) any *closed* door, window, or other thing intended to cover openings to the house, or leading from one part of it to another, or
(*c*) if he gets down the chimney, or
(*d*) if he gains entrance to the house by threats, artifice, or collusion.

If a person having committed a felony (*b*) in a house breaks out of it he is guilty of the offence of breaking out, or, if the house is a dwelling-house (*c*) and the breaking out is at night (*d*), of burglary.

It is also an offence—

(*a*) to be found by night (*d*) in possession of housebreaking tools unless a lawful excuse for such possession can be given:
(*b*) to be found by night (*d*) armed with an offensive weapon with the intention of breaking into a building and committing felony (*b*) therein;
(*c*) to be disguised at night (*d*) with the intention of committing felony (*b*);
(*d*) to be found by night in any building with the intention of committing felony (*b*) therein.

Receiving stolen goods, &c.

67. The receiving of stolen goods or goods obtained by means of a criminal offence is itself an offence; as is also the taking of a reward for helping to the recovery of stolen property without bringing the offender to trial.

The guilty knowledge of the receiver must be established. The recent possession of the goods, coupled with the inability to give a reasonable account of such possession, justifies the presumption that the receiver got the goods dishonestly. The fact that he bought them much below their value, or that he falsely denied his possession of them, would be *evidence* of guilt.

A person is considered to receive the goods as soon as he obtains control over them.

Cheating, &c.

68. The following are offences somewhat similar to theft and embezzlement and obtaining money under false pretences:—

(1.) Obtaining money by false pretences by cheating at cards;
(2.) Fraudulently obtaining the execution of a valuable security, or affixing a name on any paper with a view to its being subsequently dealt with as a valuable security;
(3.) Cheating, by a deceitful practice affecting the public;
(4.) Conspiring to defraud; that is an agreement by two or more persons to do an act with the intention of deceiving the

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(*a*) This includes opening a shut window or door, but not pushing an open window or door further open.
(*b*) As to what offences are felonies, see Table at the end of the chapter.
(*c*) A dwelling-house is any permanent building or separate part thereof in which the owner or tenant, or any one with their consent habitually sleeps at night.
(*d*) Night means the interval between nine at night and six in the morning.

public or any person or class of persons; or to extort money or goods from any person;

(5.) Fraudulently obliterating any mark denoting the property of His Majesty in any stores.

(ix.) *Forgery; Perjury; Coinage Offences; Personation.*

Forgery.

69. Forgery consists in knowingly making a false document which is on the face of it valid, with the intention to defraud or injure (*a*).

A false signature to a genuine document, or a genuine signature to a false document, amount equally to forgery if the fraudulent intention is present.

A "document" means any paper, parchment, or other material used for writing or printing.

A document is considered to be a false document if any material part of it purports to be made by or on behalf of an existing person who has not authorised its making, or by or on behalf of a person altogether fictitious. A document is also considered to be false, though made by a person in his own name, if it is so made with the fraudulent intention that it should pass as being made by someone else. A document made by a person in his own name may also become a false document if it is wrongly dated as to the time or place of making it, where such a particular is material.

The making of a false document includes not only cases where the document is literally made by the offender, but also cases where the offender makes any material alteration in, addition to, or erasure from, a genuine document.

It is not essential, in order to constitute the offence of forgery, that the false document should be completed, or should be in such a form as would be binding in law; though, if a person is charged with the forgery of any particular instrument, it must be shown that the document has such a resemblance to it as would be likely to deceive an ordinary person.

The fraudulent intention may be inferred from the document itself or proved by external evidence. The intention must be that either—

(*a*) the document should be used or acted on as genuine; or

(*b*) the actions of some person should be influenced by the belief that it is genuine.

It is sufficient if an intention to defraud some person can be inferred from all the circumstances of the case, but a mere general intention to *deceive* the public or particular persons, as for instance, by forging the signature of an officer to a pass, is not an intent to *defraud* within the meaning of this paragraph.

In some cases it is not necessary to prove a fraudulent intention, the fact that a false document has been made with the intention that it should be acted on is sufficient.

The punishment for forgery varies very much according to the nature of the document forged, as will be seen by referring to the Table at the end of the chapter.

Uttering forged documents.

70. It is an offence to utter forged documents, that is to say, knowing a document to be forged to attempt to use, or cause any one else to use, it as though it were genuine.

The use of a false document, or any false representation or statement, in order to obtain any grant, increase, or payment of

(*a*) See also s. 25 of the Army Act.

Ch. VII.

any pay or pension, or any privilege or advantage obtainable in pursuance of any warrant, order, or regulation of His Majesty or the Secretary of State, is a special offence (*a*).

Possession of forged notes, &c.

71. The mere purchase or possession of forged bank notes, and some similar documents (whether complete or not) with the knowledge that they are forged, is in itself an offence.

It is also an offence to make, sell, or be in possession of any bank note paper or any instruments or contrivances for making bank notes and similar documents.

Perjury.

72. Perjury may shortly be defined as the giving of false evidence by a witness before a court of law.

The only cases of perjury which will come before courts-martial are those where the perjury has been committed before a court-martial, or before any court or officer authorised by the Army Act to administer an oath (*b*). Perjury before a civil court will usually be dealt with by the civil courts.

The witness must have been duly sworn by the court or officer, *i.e.*, he must either have taken the oath or made an affirmation.

The false evidence must be an assertion as to some matter of fact, opinion, belief, or knowledge, which the witness does not believe to be true, or as to the truth of which *he knows* that he is ignorant.

The assertion must be as to some point which is material, *i.e.*, it must be as to some point which affects, directly or indirectly, the probability of some question which is to be determined by the proceeding in the course of which it is given, or the credit of some witness giving evidence in the course of the proceeding.

The parts of the evidence alleged to be false should be set out in the charge, and in order to prove a charge of perjury it is not sufficient to call one witness only, as that would be merely setting oath against oath; but the evidence of such a witness must be corroborated either by the evidence of another witness, or by the proof of material and relevant facts concerning it.

The making of a false declaration in the cases specified in s. 142 of the Army Act is declared to be perjury, and subject to the same penalties.

Coinage offences.

73. Coinage offences are numerous, but it is only necessary to make special mention of the following :—

(1.) Counterfeiting current gold and silver coin.
(2.) Counterfeiting current copper coin.
(3.) Counterfeiting foreign gold and silver coin.
(4.) Counterfeiting foreign copper or mixed metal coin.

By "current coin" is meant coin coined in His Majesty's mints, and current in any part of His Majesty's dominions.

The offence is complete even though the counterfeit coin does not bear that degree of resemblance to the true coin as would induce persons to accept it as genuine. The offence is usually proved by finding coining tools in the accused's house, together with pieces of counterfeit coin.

The possession of such tools is also in itself an offence.

Uttering.

It is a separate offence to utter counterfeit current coin, or gold or silver foreign coin, that is to say, to pass, or attempt to pass, such a coin as genuine knowing it to be counterfeit.

The existence of such guilty knowledge must depend on the facts of the case. The possession of other counterfeit coins, or proof

(*a*) See also para. 75 below.
(*b*) See Army Act, ss. 29, 70 (5), and Rule 124 (II).

that the accused had on previous occasions tried to pass counterfeit coins, would be strong evidence of such knowledge.

Clipping.

74. Clipping current gold and silver coin, and defacing any current coin are also offences.

Personation.

75. Under the False Personation Act, 1874, the personation of any person with the intention of fraudulently obtaining any property whatever is an offence.

By s. 142 of the Army Act a person is deemed guilty of personation who falsely represents himself to any military, naval, or civil authority to be a man in, or to be a particular man in the regular, reserve, or auxiliary forces (*a*).

(x.) *Malicious Injury to Property.*

Malicious injury to property.

76. Numerous offences come under the category of malicious injuries to property.

The essence of the offence is injury to the property of another; it is immaterial whether the offender is himself benefited by the act or not.

Such acts are offences if done unlawfully or maliciously.

A person is considered to cause an injury unlawfully and maliciously if he wilfully causes it without any lawful excuse; that is to say, without having either a legal right to act as he does, or a *bonâ fide* and reasonable belief that he has such a right. And he is considered to cause it *wilfully*, if he causes it by an act which he must know will probably cause it, or is reckless whether he causes it or not. Generally speaking the act itself justifies a presumption of malice until the contrary is shown, *e.g.*, that it was due to negligence or accidents. For instance a deliberate trespass on land whereby substantial injury is caused to crops amounts to malicious injury to property. But the charge must allege that the injury was caused maliciously.

Arson.

77. Of the various instances of malicious injury the most important is arson.

Arson consists in unlawfully and maliciously setting fire to—

any building, or
anything within a building, under such circumstances that if the building were thereby set fire to, this would be arson of the building, or
any mine, or
any ship, or
any stack of cultivated vegetable produce, or of hay, heath furze, or fern, or of turf, peat, coals, charcoal, wood, or bark, or any steer of wood or bark, or
any crop whether cut or standing, or
any wood, heath, furze or fern.

The sending of a letter threatening to commit arson is also an offence.

Other examples of malicious injury.

78. As other examples of malicious injury may be mentioned the unlawful use of explosives, damage to ships, interference with buoys, destruction of canal and harbour works and bridges, obstruction of railways, injury to telegraphs, and the wounding of cattle or other animals (*b*).

(*a*) As to the punishment for this offence, see the section and note thereon.

(*b*) The animal must be one which is the subject of theft at common law (as to which see note (*a*) on page 103), or one which is ordinarily kept in a state of confinement or for some domestic use.

Ch. VII.

(xi.) *Miscellaneous Offences.*

Bigamy.

79. Bigamy is committed by a person who, being already married to one person, goes through the form of marriage with another, or who goes through the form of marriage with another person knowing that person to be married to some one else. The law does not include the case of a person marrying a second time whose husband or wife has been continually absent from such person for seven years then last past, and has not been known by that person to be living within that time ; the burden of proving such knowledge is upon the prosecutor when the fact that the parties have been continually absent for seven years has been proved. It is also a good defence if the accused can show that he or she had reasonable grounds for believing that his or her wife or husband was dead at the time of the second marriage.

Treason.

80. The only forms of treason which need here be mentioned are—

(1.) Levying war against the Sovereign in any of His dominions.
(2.) Aiding the enemies of the Sovereign.

Thus, an officer who betrays his trust, or a soldier who deserts in the field and joins the enemy, is guilty of high treason independently of his military offence.

Certain other acts of treason (namely, compassing to levy war against the King, and compassing to move any foreigner to invade the King's dominions), can, under an Act of 1848, be also treated as felonies ; these acts are commonly known as "treason felonies," and so called in s. 41 of the Army Act.

Being at large whilst sentenced to penal servitude.

81. The mere fact of a criminal sentenced to penal servitude being at large within any part of His Majesty's dominions during his term of penal servitude without some lawful cause is an offence.

Escape.

82. Offences relating to escape from civil custody would probably never be tried by court-martial, and it seems only requisite to observe here that—

if a person assists any alien enemy who is a prisoner of war within His Majesty's dominions, whether in confinement or on parole, to effect his escape ; or

if a person (being a British subject) on the high seas assists any such prisoner of war who has escaped from His Majesty's dominions in his escape towards any other country ;

he is, in either case, guilty of an offence.

Offences relating to the obstruction of justice.

83. It is an offence either—

(*a*) To conspire to accuse any one falsely of a crime, or to do anything to obstruct the course of justice ; or
(*b*) To try to dissuade witnesses from giving evidence, in order to obstruct the course of justice ; or
(*c*) To obstruct the execution of any legal process ; or
(*d*) To conceal or procure the concealment of a felony (*a*) ; or
(*e*) To enter into an agreement for valuable consideration to refrain from prosecuting a person for a felony (*a*), or to show favour to the accused in any such prosecution.

(*a*) As to what offences are felonies, see Table at end of chapter.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty (*a*).
Abandonment. See "Children."			
Abduction—			
Of unmarried girl under 16	39	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Of unmarried girl under 18, with intent that she may be married to or carnally known by a man.	39	,,	Imprisonment for 2 years, with or without hard labour.
Of woman, by force, with intent that she shall be known by a man.	38	Felony	Penal servitude for 14 years (*b*).
Agreement by two or more persons to try to induce a woman to commit adultery, &c., or to take a woman out of custody of her parents in order to marry her to any person without their consent.	39	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Abortion—			
Procuring abortion	40	Felony	Penal servitude for life (*b*).
Supplying poison, &c., to be used for procuring abortion.	40	Misdemeanour	Penal servitude for 5 years (*b*).
Accessory—			
Before the fact	17, 18, 19, 21	Felony or misdemeanour, according to nature of offence.	Same penalty as may be awarded for the offence.

(*a*) See Army Act, s. 41 (5). This column states in the case of each offence the maximum "punishment assigned for such offence by the law of England," except that civil courts can (as a court-martial cannot: Army Act, s. 68 (21)) award in case of certain offences more than two years' imprisonment. It must be observed that in a few cases a heavier punishment than the punishment stated in this column can be inflicted by sentencing the offender to "such punishment as might be awarded to him . . . in respect of an act to the prejudice of good order and military discipline."

(*b*) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty.
Accessory—*continued.*			
After the fact (if offence is a felony)	22	Felony	Imprisonment for two years with or without hard labour, or, if the offence is murder, penal servitude for life.
Arson—			
Arson	77	,,	Penal servitude for 14 years (*a*) (or, in a few cases, for life).
Letter threatening to commit arson	77	,,	Penal servitude for 10 years (*a*).
Attempt to commit arson	77	,,	Penal servitude for 7 years (*a*).
Assault—			
Common assault	33	Misdemeanour	Imprisonment for 1 year, with or without hard labour.
With intent to commit felony	34	,,	Imprisonment for 2 years, with or without hard labour.
With intent to resist arrest, &c.	34	,,	Imprisonment for 2 years, with or without hard labour.
On peace officer in execution of duty	34	,,	Imprisonment for 2 years, with or without hard labour
Occasioning actual bodily harm..	34	,,	Penal servitude for 5 years (*a*).
Unlawful wounding	34	,,	Penal servitude for 5 years (*a*).
Unlawful wounding .. } with intent to do grievous Shooting or attempting to shoot } bodily harm, &c. ..	34	Felony	Penal servitude for life (*a*).
Indecent assault on female	35	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Indecent assault on male, or assault with intent to commit sodomy.	35	,,	Penal servitude for 10 years (*a*).
See also "Robbery."			
Attempt to commit an offence	23	,,	Imprisonment for 2 years.
See also "Arson," "Assault (attempt to shoot)," "Murder," "Carnal knowledge," "Indecency, acts of," "Procuration," "Sodomy."			

Bigamy	79	Felony	Penal servitude for 7 years (*a*).
Breaking and Entering, Breaking out. See "Housebreaking."			
Burglary .. .. See also "Housebreaking."	66	,,	Penal servitude for life (*a*).
Carnal Knowledge—			
Of girl under 13	37	,,	Penal servitude for life (*a*).
Of girl under 16 but over 13	37	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Attempt to have carnal knowledge of girl under 13	37	,,	Imprisonment for 2 years, with or without hard labour.
Allowing girl under 16 to resort to or be on premises for the purpose of being carnally known by a man. See also "Abduction," "Disorderly houses," "Procuration," "Rape."	37	Misdemeanour; if girl under 13, felony.	Imprisonment for 2 years, with or without hard labour; if girl under 13, penal servitude for life (*a*).
Cheating—			
Cheating at cards, &c.	68 (1)	Misdemeanour	Penal servitude for 5 years (*a*).
Obtaining execution of valuable security, &c...	68 (2)	,,	Penal servitude for 5 years (*a*).
Deceiving the public	68 (3)	,,	Imprisonment for 2 years, with or without hard labour.
Conspiring to defraud	68 (4)	,,	Imprisonment for 2 years, with or without hard labour.
Obliterating mark on public stores	68 (5)	Felony	Penal servitude for 7 years (*a*).
Children—			
Ill-treatment of child	45	Misdemeanour	Imprisonment for 2 years, with or without hard labour, and a fine of £100, or either of such penalties.
Abandonment or exposure of child	46	,,	Penal servitude for 5 years (*a*).
Concealment of birth	47	,,	Imprisonment for 2 years, with or without hard labour.
Clipping. See "Coinage."			

(*a*) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty.
Coinage—			
Counterfeiting current gold and silver coins	73	Felony	Penal servitude for life (*a*).
Counterfeiting current copper coins	73	„	Penal servitude for 7 years (*a*).
Counterfeiting foreign gold and silver coins	73	„	Penal servitude for 7 years (*a*).
Counterfeiting foreign copper coins	73	Misdemeanour	Imprisonment for 1 year, or, if the offender has been previously convicted of the same offence, penal servitude for 7 years.
Uttering counterfeit current coin	73	„	Imprisonment for 1 year, with or without hard labour, or, if the offender at the time of the uttering has any other such coin in his possession, or if he utters another such coin within 10 days, for 2 years, with or without hard labour.
Uttering counterfeit gold or silver foreign coin	73	„	Imprisonment for 6 months, with or without hard labour: for a second offence, imprisonment for 2 years, with or without hard labour; for a subsequent offence, penal servitude for life.
Possession of three or more counterfeit current coins with intention of uttering them.	73	„	Penal servitude for 5 years (*a*) if the coins are gold or silver; imprisonment for 1 year, with or without hard labour, if the coins are copper.
Possession of coining tools	73	Felony	Penal servitude for life, or 7 years, according as the coin is—(1) current or foreign gold or silver coin, or (2) current copper coin.
Clipping current gold and silver coins..	74	„	Penal servitude for 14 years (*a*).
Defacing any current coin	74	Misdemeanour	Imprisonment for 1 year, with or without hard labour.
Concealment of Birth. See "Children."			
Conspiracy. See "Abduction," "Cheating," "Murder," "Obstruction of Justice."			

Dangerous Acts—			
Use of explosives	44 (1)	Felony	Penal servitude for 14 years (*a*), or, if the explosive is used directly for causing the injury, or if a person is injured by the explosion, for life.
Poisoning with intent to injure	44 (2)	Misdemeanour	Penal servitude for 5 years (*a*).
Poisoning if life endangered or grievous bodily harm inflicted thereby.	44 (2)	Felony	Penal servitude for 10 years (*a*).
Furious driving, racing, or wilful neglect by person in charge of vehicle causing bodily harm.	44	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Disguise at Night—Being disguised at night with intention of committing felony.	66	„	Penal servitude for 5 years, or, for second offence, 10 years (*a*).
Disorderly Houses—Keeping of disorderly house	43	„	Imprisonment for 2 years, with or without hard labour.
Embezzlement—			
Embezzlement	59	Felony	Penal servitude for 14 years (*a*).
Fraudulently converting chattels, &c., of which person has control by virtue of appointment in public service.	61	„	Penal servitude for 14 years (*a*).
Entering. See "Housebreaking."			
Escape—			
Being at large whilst sentenced to penal servitude	81	„	Penal servitude for life (*a*).
Assisting alien enemy to escape	82	„	Penal servitude for life (*a*).
Assisting prisoner of war who has escaped from His Majesty's dominions to escape towards another country.	82	„	Penal servitude for life (*a*).
Explosives. See "Dangerous Acts."			
Extortion—			
Extortion	65	„	Penal servitude for 5 years (*a*), or, if threat in writing, for life.
Extortion by means of threats to accuse person of offence punishable with death or penal servitude or any infamous offence.	65	„	Penal servitude for life (*a*).
Inducing person by threats to execute, &c., a valuable security.	65	„	Penal servitude for life (*a*).

(*a*) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty.
False Declaration. See "Perjury."			
False Pretences—			
Obtaining any chattel, money, or valuable security by ..	62	Misdemeanour	Penal servitude for 5 years.
Fraudulently inducing person to execute valuable security..	68	,,	Penal servitude for 5 years.
Forgery—			
Forgery generally	69	,,	Imprisonment for 2 years.
Forgery of bank note or endorsement thereon, or of a deed, bond, or signature of attesting witness thereto, or testamentary instrument, or bill of exchange, promissory note, or any acceptance, endorsement, or assignment thereof.	69	Felony	Penal servitude for life (*a*).
Uttering forged documents	70	Felony or misdemeanour, according as forging the document is felony or misdemeanour.	The same penalty as if the offender had forged the document.
Use of false documents, &c., to obtain grant, &c., in pursuance of Royal Warrant, &c.	70	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Purchase or possession of forged notes, &c., knowing them to be forged.	71	Felony	Penal servitude for 14 years (*a*).
Making, &c., bank note paper, &c.	71	,,	Penal servitude for 14 years (*a*).
High Treason. See "Treason."			
Housebreaking—			
Entering dwelling-house at night	66	,,	Penal servitude for 7 years (*a*).
Breaking and entering a dwelling-house by day, or a school-house, shop, warehouse, counting-house, or place of divine worship by day or night.	66	,,	Penal servitude for 7 years (*a*); or if felony committed, 14 years; or if felony committed in place of divine worship, for life.

Breaking out from dwelling-house by day, or from school-house, shop, warehouse, or counting-house by day or night.	66	„	Penal servitude for 14 years (*a*).
Breaking out from place of divine worship by day or night.	66	„	Penal servitude for life.
Possession of housebreaking tools by night	66	Misdemeanour	Penal servitude for 5 years, or, for second offence, 10 years (*a*).
Possession of offensive weapons with intention of breaking into house.	66	„	
Being found by night in building with intention of committing felony therein.	66	„	
See also "Burglary," "Disguise at night."			
Indecency—Any of the acts of indecency mentioned in para. 42, or an attempt to commit acts of gross indecency with another male person.	42	„	Imprisonment for 2 years, with or without hard labour.
See also "Assaults."			
Malicious Injury to Property—			
Where injury exceeds £5	76	„	Imprisonment for 2 years, with or without hard labour; or if offence committed between 9 p.m. and 5 a.m., penal servitude for 5 years (*a*).
Where injury does not exceed £5	76	„	Imprisonment for 2 months, or a fine of £5 in addition to a sum not exceeding £5 to be paid to person whose property is injured.
Damage to trees and shrubs if growing in grounds adjoining dwelling-house, or if damage exceeds £5.	76	Felony	Penal servitude for 5 years (*a*).
Damage to ships	78	„	Penal servitude for 7 years (*a*).
Interference with buoys	78	„	Penal servitude for 7 years (*a*).
Destruction of canal works, &c...	78	„	Penal servitude for life (*a*).
Obstruction of railways	78	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Injury to telegraphs	78	„	Imprisonment for 2 years, with or without hard labour.
See also "Dangerous Acts (Explosives)."			
Manslaughter	52	Felony	Penal servitude (*b*).

(*a*) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

(*b*) The punishment is regulated by s. 41 of the Army Act.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty.
Murder—			
Murder	50	Felony	Death (no alternative) (*b*).
Attempt to murder	54	,,	Penal servitude for life (*a*).
Sending or delivering letter threatening to murder	51	,,	Penal servitude for 10 years (*a*).
Conspiracy to murder See also "Accessory after the Fact."	55	Misdemeanour	Penal servitude for 10 years (*a*).
Neglect. See "Children," "Servants."			
Obstruction of Justice—Any offence described in para. 83. See also "Perjury."	83	,,	Imprisonment for 2 years, and, in the case of the offence mentioned in para. 83 (*a*), with or without hard labour.
Obtaining Goods under False Pretences. See "False Pretences."			
Perjury—Perjury and making false declaration under s. 142 of the Army Act.	72	,,	Penal servitude for 7 years (*a*).
Personation—Personation with intention of fraudulently obtaining property.	75	Felony	Penal servitude for life (*a*).
Poison. See "Abortion," "Dangerous acts."			
Procuration—Procuring or attempting to procure woman or girl under 21 to have unlawful carnal connection.	38	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Rape	36	Felony	Penal servitude (*b*).
Receiving Stolen Goods. See "Theft."			
Robbery—			
Robbery	64	,,	Penal servitude for 14 years (*a*), or if actual violence used, or offender is armed with offensive weapon or accompanied by any other person, penal servitude for life (*a*) and three floggings.

Assault with intent to rob	64	„	Penal servitude for 5 years (*a*), or if offender accompanied by any other person, penal servitude for life (*a*) and three floggings.
Servants—Neglect of	48	Misdemeanour	Penal servitude for 5 years (*a*).
Sodomy—			
Sodomy	41	Felony	Penal servitude for life (*a*).
Attempt to commit sodomy	41	Misdemeanour	Penal servitude for 10 years (*a*).
See also "Assault."			
Theft—			
Theft of thing the subject of theft at common law (*c*).	56	Felony	Penal servitude for 5 years (*a*), or if after previous conviction for felony, 10 years.
Theft of dogs or fraudulently taking reward to recover stolen or lost dog.	56	Misdemeanour (*d*)	Imprisonment for 6 months, with or without hard labour, or a fine of £20 in addition to the value of the dog, or, for second offence, imprisonment for 18 months, with or without hard labour.
Theft by servants of property in possession of master.	56	Felony	Penal servitude for 14 years (*a*).
Theft of trees, shrubs, &c., wheresoever growing, of value of 1*s.*, or upwards.	56	Felony (*e*)	Fine not exceeding £5 over and above value of property stolen, or for second offence imprisonment for 1 year with or without hard labour, or for third offence penal servitude for 5 years, or, where a previous conviction for felony, 10 years (*a*).
Theft from dwelling-house (*f*) at night, if value of thing stolen is £5, or thief frightens any one in the house by menaces or threats.	56	Felony	Penal servitude for 14 years (*a*).

(*a*) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

(*b*) The punishment is regulated by s. 41 of the Army Act.

(*c*) As to what are not the subjects of thefts at common law, see para. 62 note (*a*).

(*d*) A *first* offence of *dog stealing* is not an indictable misdemeanour, and can only be dealt with summarily before justices.

(*e*) A first or second offence of this kind is not a felony, and can only be dealt with summarily before justices.

(*f*) As to meaning of "dwelling-house" and "night," see notes on para. 66.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty.
Theft—*continued.*			
Receiving stolen goods—			
If offence by which the thing was improperly obtained is a felony, at common law, or under the Larceny Act, 1861.	67	Felony	Penal servitude for 14 years (*a*), or in case of stolen or embezzled letter or letter bag, or anything known to have been sent by post, for life.
If offence by which the thing was improperly obtained is a misdemeanour under the Larceny Act, 1861.	67	Misdemeanour	Penal servitude for 7 years (*a*).
Taking reward to recover stolen property, &c.	67	Felony	Penal servitude for 7 years (*a*).
Threatening Letter. See "Arson," "Extortion," "Murder."			
Treason—			
Treason	80	Treason	Death (*b*).
Treason felony	80	Felony	Penal servitude (*b*).
Unlawful Wounding. See "Assault."			
Uttering. See "Coinage," "Forgery."			

(*a*) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

(*b*) The punishment is regulated by s. 41 (1) (3) of the Army Act.

CHAPTER VIII.

POWERS OF COURTS OF LAW IN RELATION TO COURTS-MARTIAL AND OFFICERS.

Introductory.

Courts-martial and officers amenable for acts done without or in excess of jurisdiction.

1. The members of courts-martial and officers in the exercise of individual authority are, like the inferior civil courts and magistrates, amenable to the superior civil courts for injury caused to any person by acts done either without jurisdiction, or in excess of jurisdiction; although there is not, in the ordinary sense of the word, any appeal from the decision of a court-martial or from the order of an officer. Such injuries will equally be inquired into whether they affect the person, property, or character of the individual injured; and whether the individual injured is a civilian or is subject to military law.

Exceptions in case of injuries affecting only military position.

2. There is, however, this material exception in the case of a person subject to military law, that if the injury affects only his military position or character, a court of law will not interfere. He has agreed to subject himself to military law in those respects, and must take the consequences. Thus, the dismissal of an officer from the service, the deprivation of rank, or the reduction or deprivation of military pay, will not be remedied by a court of law (*a*).

Meaning of acting without jurisdiction.

3. The jurisdiction of a tribunal may be limited by conditions as to its constitution, or as to the persons whom or the offences which it is competent to try, or by other conditions which the law makes essential to the validity of its proceedings and judgments. If the tribunal fails to observe these essential conditions, it acts without jurisdiction. An individual officer acts without jurisdiction if he exceeds the limits of the authority conferred on him, whether by Act of Parliament, the custom of the service, or lawful delegation from a superior officer.

Illustrations of acting without jurisdiction.

4. Thus a court-martial will act without jurisdiction if it is not properly constituted; for instance, if the number of members is below the legal minimum, or if all the members of a general court-martial have not held commissions for the three years preceding the day of assembling the court, or if the president is not of the proper rank, or has not been properly appointed. For the above reason it is directed by the Rules of Procedure that a court-martial, before acting, shall ascertain that it is properly constituted, a provision which, as will be seen, is required for the protection of the members themselves (*b*).

Further illustrations.

5. An officer who without due authority confirms the finding and sentence of a court-martial, and a commanding officer who punishes a warrant officer, will also act without jurisdiction. Again, a court-martial or officer dealing with a person who is not amenable to military law, as if he were so amenable, will act without jurisdiction (*c*). So, too, if a court-martial convicts the

(*a*) See *Poe's case*, below, para. 12; *Mansergh's case*, below, paras. 18–20; and *Roberts' case*, below, paras. 21, 22; and *Re Tufnell*, p. 124, note (*a*).
(*b*) See Rule 22.
(*c*) See *Comyn* v. *Sabine*, and other cases, below, paras. 52, *seq.*

Ch. VIII.

accused of an offence which is not an offence under the Army Act or (save as provided by s. 56 of the Army Act) of an offence with which he was not charged, the court acts without jurisdiction. Where the offence is not properly charged, the accused may be held not to have been charged with the offence at all; but the proceedings of military courts will not be scrutinised with the same strictness as those of inferior civil courts.

Result of acting without jurisdiction.

6. The result of acting without jurisdiction is that the act is void, and each member of the court-martial, or the officer who so acted, is liable to an action for damages.

Excess jurisdiction.

7. The consequences of exceeding the bounds of jurisdiction are the same as those of acting without jurisdiction. For instance, when a court having power to award two years' imprisonment, sentenced the accused to fifteen years' imprisonment, the sentence being in excess of that which the court was authorised to pass, was held to be void, and the members of the court were held liable to an action for damages (*a*). Other cases of this class arise where jurisdiction is exercised with cruelty or oppression amounting to an abuse of it. A power to award summary punishment or imprisonment does not justify a court or officer in causing the punishment to be inflicted in a barbarous manner, or with circumstances of undue severity; and in such cases, though there is a jurisdiction, yet the excuse for the act of the court or officer, which would otherwise exist by reason of the jurisdiction, is taken away by reason of the excess in the mode of exercising it (*b*).

Modes of interposition of courts of law.

8. The proceedings by which the courts of law supervise the acts of courts-martial and of officers may be criminal or civil. Criminal proceedings take the form of an indictment for assault, false imprisonment, manslaughter, or even murder. Civil proceedings may either be preventive, *i.e.*, to restrain the commission or continuance of an injury; or remedial, *i.e.*, to afford a remedy for injury actually suffered. Broadly speaking, the civil jurisdiction of the courts of law is exercised as against the tribunal of a court-martial by writs of prohibition or certiorari; and as against individual officers by actions for damages. A writ of habeas corpus also may be directed to any officer, governor of a prison, or other, who has in his custody any person alleged to be improperly detained under colour of military law. The writs of prohibition, certiorari, and habeas corpus will be first discussed, then the subject of actions for damages, and lastly, that of liability to criminal proceedings.

(i.) *Writ of Prohibition.*

Definition of the writ of prohibition.

9. The writ of prohibition issues out of the High Court of Justice to any inferior court, when such inferior court concerns itself with any matter not within its jurisdiction, or when it transgresses the bounds prescribed to it by law. The writ forbids the inferior court to proceed further in the matter, or to exceed the bounds of its jurisdiction; and if want of jurisdiction in the inferior court be once shown, any person aggrieved by the usurpation of jurisdiction is entitled to the writ as a matter of right.

When prohibition will issue.

10. The writ will not be granted for irregularity in the proceedings or wrong decision of the merits: nor when it can be of no use, as, for example, after a sentence has been carried into execu-

(*a*) *Frye* v. *Ogle*, below, para. 41.

(*b*) The question whether an officer is liable to an action for ordering an arrest or prosecution maliciously and without probable cause, will be considered separately. See below, paras. 67–74.

tion ; nor will it issue on the ground that the facts which establish a military offence disclose at the same time a greater offence (*e.g.*, high treason) cognisable by the civil courts (*a*).

Grant v. *Gould*, 1792.

11. Applications for a prohibition to restrain courts-martial have hitherto been few, and uniformly unsuccessful. The earliest reported case is that of *Grant* v. *Gould* (*b*). In 1792 Serjeant Grant of the 74th Regiment was tried by court-martial on a charge of having persuaded two drummers of the Coldstream Guards to desert, and enlist in the service of the East India Company. He was convicted and sentenced to be reduced to the ranks, and to receive one thousand lashes. Grant moved for a prohibition to prevent the execution of this sentence on the ground that he was not a soldier and therefore not liable to be tried by court-martial, that evidence was improperly admitted and rejected, and that he was convicted of an offence not specifically charged. The court, being of opinion that at most an error in the proceedings had been made, refused the writ. At the same time, Lord Loughborough, in delivering the opinion of the court, affirmed the general principle that "Naval Courts-Martial, Military Courts "Martial, Courts of Admiralty, Courts of Prize, are all liable "to the controlling authority which the courts of Westminster "Hall have from time to time exercised for the purpose of pre-"venting them from exceeding the jurisdiction given to them."

Poe's case, 1832.

12. The case of Lieutenant Poe (*c*), which occurred in 1832, is the authority for the proposition that a prohibition will not issue after sentence confirmed and executed. Lieutenant Poe, being a passenger on board the ship Cæsar on her way to England, was accused of stealing a 5*l.* note and certain articles of wearing apparel from his servant's trunks, which were kept in his (Poe's) cabin. On investigation of the charge by the captain of the ship and other officers on board, Lieutenant Poe was expelled by the officers and passengers on board from their table and society during the remainder of the voyage. Lieutenant Poe never took any measures to vindicate his honour, and was consequently tried for conduct to the prejudice of good order and military discipline, found guilty, and sentenced to be dismissed the service. The sentence was confirmed by the King and carried into execution ; and an application on behalf of Lieutenant Poe that a prohibition might issue "to the Judge-Martial and Advocate-General of his Majesty's forces" to restrain the execution of the sentence was refused, Chief Justice Denman observing that even supposing the case of *Grant* v. *Gould* to furnish some argument that a writ of this nature might be directed to him (the Judge-Advocate) before execution of the sentence, still it was impossible to discover what he could be required to abstain from after execution.

M'Carthy's case, 1866.

13. The later case of Serjeant M'Carthy shows that a prohibition will not issue merely because the evidence given in support of a military charge discloses a higher civil offence. In 1866 Serjeant M'Carthy (*d*) was tried by a general court-martial on a charge of "coming to the knowledge of an intended mutiny, and not revealing such knowledge to his superior officers." The evidence

(*a*) As to the general law, see the exhaustive opinion of the Judges in *Mayor of London* v. *Cox*, L. R., 2 H. L., 229, and the cases there cited. The right to a writ of prohibition has frequently been considered with reference to the Ecclesiastical Courts, and it is clear that the courts of law will not entertain questions of their *practice*, so long as they do not exceed their jurisdiction.

(*b*) 2 H. Blackstone's Reports, 69. McArthur on Courts-Martial, 4th edition, i. 120.

(*c*) *Re Poe*, 5 Barn. and Adol., 681.

(*d*) 14 W. R. (Ir.). 918.

Ch. VIII

given implicated him in the Fenian conspiracy, and showed endeavours on his part to induce soldiers to become members of that conspiracy, and various other acts amounting to overt acts of treason. After the close of the prosecution the court-martial was adjourned in order to permit the prisoner to apply to the Court of Queen's Bench (Ireland) for a writ of prohibition on the ground that the evidence establishing the military offence disclosed also that the prisoner was guilty of treason, in which case a court-martial would have no jurisdiction. The court held that the military offence does not merge in the greater offence, and declined to accede to the application.

No example of issue of prohibition to a court-martial.

14. Although the writ of prohibition has never actually been issued to a court-martial, there seems no doubt that it might issue in a proper case; as, for example, if a court-martial were proceeding to try a person not subject to military law, or had passed a sentence which they had no power whatever to pass.

To officer.

15. The question whether a writ of prohibition would issue to an officer exercising individual authority does not seem ever to have been raised.

Disobedience of prohibition.

16. Disobedience of a prohibition is a contempt of court, and as such punishable by fine and imprisonment at the discretion of the court which granted the writ.

(ii.) *Writ of Certiorari.*

Definition of the writ of certiorari.

17. Certiorari is a writ issuing (in most cases) out of the High Court of Justice to the judges or officers of inferior courts, and commanding them to certify and return the record of a matter, *e.g.*, a conviction or order, depending before them, to the end that more sure and speedy justice may be done. If the conviction or order of the inferior court is found to be bad in law, it will be quashed by the High Court.

When certiorari will issue.

In ordinary cases the writ is issued on the application of the person aggrieved almost as a matter of course, unless he has by his conduct precluded himself from taking an objection (*a*). In the case of a court-martial sentence, the writ will issue only when the rights affected by the judgment of the court are civil rights, and the court is acting without jurisdiction: it will not issue when the rights affected are dependent on military status and military regulations (*b*).

Mansergh's case, 1858.

18. Major Mansergh's case was as follows:—In January, 1858, Major (then Captain) Mansergh was on duty with his regiment, the 6th Foot, at Calcutta, under the command of Colonel Barnes. In February, 1858, Brevet-Major Mansergh was gazetted to a majority in the 15th Foot, at that time stationed in England. Notice of this appointment was transmitted to India and notified in general and regimental orders in the usual way, after which notification Major Mansergh ceased, according to the rules of the army, to belong to the 6th Foot. The latter regiment was about to start on active service, when Colonel Barnes informed Major Mansergh of his promotion and desired him to hand over his company to another officer, which he did accordingly.

His trial by court-martial.

19. Subsequently Major Mansergh, conceiving that the notification of his appointment to the 15th Foot had been obtained by Colonel Barnes for the purpose of excluding him from active service, wrote

(*a*) *R.* v. *Justices of Surrey*, L. R., 5 Q. B. 467, and see on the general law *Colonial Bank* v. *Willan*, L. R., 5 P. C. 417.

(*b*) *Re Mansergh*, 1 Best & Smith, 400; 30 L. J. (N.S.) Q. B. 296. *Re Roberts*, reported in "Times," 11th June, 1879.

a letter to the Colonel expressing that view in strong language. For this he was placed under arrest, and subsequently tried by court-martial on a charge of having addressed to his superior officer a letter containing highly offensive and insulting language, such conduct being grossly insubordinate, highly unbecoming a commissioned officer, and subversive of military discipline. Major Mansergh was found guilty and sentenced to be dismissed the army, and the proceedings having been confirmed, were sent to England and deposited with the Judge Advocate-General. Major Mansergh then applied to the Court of Queen's Bench for a rule calling on the Judge Advocate-General to show cause why certiorari should not issue to bring up, in order that it might be quashed, the record of his conviction; on the ground that after his promotion he ceased to be within the command of the Commander-in-Chief in India, and that consequently the court-martial had no jurisdiction to try him.

Refusal of application for certiorari.

20. The Court refused the application—Chief Justice Cockburn observing, "I quite agree that when the civil rights of a person in military service are affected by the judgment of a military tribunal, in pronouncing which the tribunal has either acted without jurisdiction or has exceeded its jurisdiction, this court ought to interfere to protect these civil rights, *e.g.*, where the rights of life, liberty, or property are involved, although I do not know whether the latter case could occur. Here, however, there was nothing of the sort, the only matter involved was the military status of the applicant—a thing which depends entirely on the Crown, seeing that every person who enters into military service engages to be entirely at the will and pleasure of the Sovereign. Then there is this additional fact that these proceedings originated abroad in a country the tribunals of which are not subjected to our jurisdiction. It is contended that because we have the record of the proceedings in the country we have jurisdiction over it. Assuming that for a moment, yet when we look at the particular nature of the case before us, we see that the military status of the applicant alone is affected, and consequently if he had just cause of exception to the act of the tribunal by which he was sentenced, he might have appealed to the Queen to reconsider the matter with the advice of her Judge Advocate. For these reasons I am of opinion that in this case we have no jurisdiction to grant a certiorari; besides which, certiorari being a discretionary writ, we most certainly ought not in the exercise of our discretion to grant it if we had the jurisdiction." Three other judges concurred, and the application was refused.

Roberts's case, 1879.

21. A similar application in June, 1879, by Captain Francis Roberts, of the 94th Regiment, was equally unsuccesful. Captain Roberts founded his application on the ground that the sentence of the court-martial dismissing him from the service was invalid, in that it simply sentenced him to be dismissed the service without stating the cause of dismissal. The charge against Captain Roberts appears to have been twofold:—(1) That he had been guilty of scandalous conduct unbecoming an officer and gentleman in having written and sent to certain persons statements wilfully false and malicious respecting Colonel Lord John Taylour, his commanding officer. (2) That he had been guilty of conduct prejudicial to good order and military discipline in writing the statements referred to, which were charged simply as false. An affidavit was filed by Mr. Roberts stating that since the sentence he had been occupied in various attempts to obtain a revision of the sentence.

Ch. VIII.

No distinction between his case and Mansergh's case.

22. It was attempted to distinguish this case from that of Mansergh, on the ground that here civil rights were indirectly affected, as Mr. Roberts would lose his rights to pension or retiring allowance, and would lose the sum he had paid for purchase. But it was at once pointed out by the Chief Justice and Mr. Justice Mellor, that the rights referred to were purely military in their nature and dependent on military status and military regulations, and *Mansergh's case* was considered decisive against granting the application (*a*).

(iii.) *Writ of Habeas Corpus.*

Writ of *Habeas Corpus*, the remedy against illegal custody.

23. Any person who is detained in what he conceives to be illegal custody by order of a court-martial or other military authority, can apply for a writ of *habeas corpus*. This writ is the most celebrated writ in English law, being the great remedy for a person wrongfully deprived of his liberty. There are varieties of it which are employed for merely removing prisoners from one court to another for the better administration of justice ; but by far the most important species is that which affords the above remedy, and is known as *habeas corpus ad subjiciendum*. It is addressed to the person who detains another in custody, and commands him to produce the body of the prisoner to undergo and receive whatever the judge or court awarding the writ shall consider in that behalf. It issues out of the High Court of Justice, and into all parts of the King's dominions, save as provided by 25 & 26 Vict. c. 20, which enacts that no writ of *habeas corpus* shall issue out of any of the courts in England into any colony or foreign dominion of the Crown where His Majesty has a lawfully established court of justice having authority to issue this writ and to ensure its due execution. The person to whom it is addressed must make a return to the writ stating why he holds the prisoner in custody ; and must bring the prisoner into court. On the return of the writ the prisoner is either discharged, or, if the return is sufficient, *i.e.*, shows sufficient cause for the detention in custody, is remanded to custody, or is admitted to bail.

When *habeas corpus* will issue.

24. The writ will issue to any person who has a person in custody, whether civil or military, if the affidavits in support of the application show some probable ground for awarding it. The writ will not as a rule issue to question the mode in which military jurisdiction has been exercised (*b*) ; but if a particular formality is by statute requisite to make valid an order (for instance) for imprisonment, and the formality is shown not to have been followed, then it may be granted (*c*).

What is a sufficient return to writ.

25. It would seem, as a rule, to be a sufficient return to the writ that the person in custody is a person subject to military law, and that all the proceedings were according to military law (*d*).

General disinclination

26. Blake's case (*e*), in which the application for the writ was

(*a*) "Times," 11th June, 1879. In the case of *Re Tuffnell*, L.R., 3 Ch. D., 164, a petition of right was presented by an army surgeon, who had been compulsorily retired on half pay, for the injury thereby sustained by him. A demurrer by the Attorney-General to the petition was allowed, the Vice-Chancellor stating the law clearly to be that "every officer in the army is subject to the will of the Crown and can be removed and put on half pay, or dealt with as the Crown, with a view to the public convenience, thinks best." See also *R.* v. *Secretary of State*, L. R. [1891] 2 Q. B., pp. 330, 331.

(*b*) *Blake's case*, 2 M. and S., 428.

(*c*) *Allen's case*, 30 L. J. (N.S.), Q. B., 38 ; 7 Jur. (N.S.), 234, but see now Army Act, s. 172 (4), and below, para. 37.

(*d*) *R.* v. *Suddis*, 1 East, 306 ; and as to general law, *Brenan's case*, 10 Q. B., 492.

(*e*) 2 M. and S., 428.

Of courts to interfere with matters of discipline.

Blake's case, 1814.

refused, is a strong instance of the disinclination of courts of law to interfere with matters of military discipline. The writ was moved for on behalf of Lieutenant Blake, of the 55th Regiment, to be addressed to the commanding officer of the infantry barracks at Windsor. The affidavit in support of the motion stated that Lieutenant Blake, being on leave and hearing that there were certain charges alleged against him, voluntarily surrendered himself to take his trial, that on the 21st September he was placed under arrest and in close confinement, and that until the latter end of October he was not permitted to quit his room, but afterwards, on a representation that his health suffered, was allowed to take exercise. On the 1st November, not having been furnished with any copy of the charges against him, he presented a memorial to the Commander-in-Chief, but did not receive any answer. On the 16th of November he was officially informed that a warrant had been signed for holding a court-martial, and was furnished with a copy of the charges, which consisted among others of certain offences stated to have been committed at Windsor towards an officer of the same regiment. On the 22nd, the 55th Regiment was ordered on foreign service, and shortly afterwards sailed for Holland. The affidavit then stated that all or many of the witnesses who might be called for the prosecution or defence had sailed with the regiment, that the laws of this realm would not permit him to be sent to a foreign country for trial, and therefore he could no be brought to trial before the return of the regiment. It further alleged that, as a matter of fact, a sufficient number of officers might at any time have been conveniently assembled for the purpose of constituting a court-martial; and therefore there had been ample opportunity for conveniently assembling one between the arrest and the signing of the warrant, and also between the signing of the warrant and the sailing of the regiment.

Rule *nisi* granted.

27. The Court inquired if there was any instance of a *habeas corpus* to take a military subject out of military arrest, and were referred to the case of Serjeant Wade (*a*) where a rule *nisi* (*i.e.*, a rule calling on the other side to argue the question and show why the writ should not issue) had been granted. Mr. Justice Dampier, however, said he hesitated about granting a rule nisi, because upon the question whether a court-martial could be conveniently assembled, if the return should be general that a court-martial could not be conveniently assembled, the court would be concluded, and he conceived the truth of such return could hardly be entered into upon an action for a false return, and Mr. Justice Le Blanc concurred. A rule *nisi* was, however, granted, and on its coming on to be argued, an affidavit from the Judge Advocate-General was produced, stating that proceedings were instituted for bringing Blake to trial as soon after his arrest as could conveniently be done; and that he believed Blake would have been tried before, had not the trial been postponed partly on account of the absence in the West Indies of persons alleged by Blake to be material for his defence, and partly on account of the embarkation of the 55th Regiment.

Rule discharged.

28. The Court refused the writ, Lord Ellenborough, C.J., observing, "Up to the 16th November the applicant seems to have thought it a fair time, and the delay since has been satisfactorily explained; it is not a wanton or oppressive delay, but arising out of the circumstances of the country. We cannot lay down any

(*a*) Cited in the report of this case, 2 M. & S., 429, n.

Ch. VIII.

general rule, but must in a very great degree give credence to people in high situations when they depose that all has been done which could conveniently and according to the course of office be done, and unless something be shown to the contrary" (*a*).

Sufficiency of return that prisoner is in custody under sentence of competent court.

29. The leading authority as to the sufficiency of a return to the writ which states that the prisoner is in custody under the sentence of a court-martial competent to pass such sentence on him, is *Suddis' case*, decided in 1801 (*b*).

Suddis' case, 1801.

30. Suddis was a gunner of the Royal Artillery sentenced at Gibraltar by a general court-martial to fourteen years' transportation for having received articles stolen from a warehouse in Gibraltar. A writ of *habeas corpus* was directed to the Governor of Portsmouth to bring him up from custody. It was held a sufficient return to the writ that the defendant was in custody under the sentence of a court of competent jurisdiction to inquire into the offence and to pass such a sentence, without setting forth the particular circumstances to warrant the sentence. Lord Kenyon, C.J., said, "We are not now sitting as a Court of Error to review the regularity of these proceedings; nor are we to hunt after possible objections." And Mr. Justice Grose, "It is enough that we find such a sentence pronounced by a court of competent jurisdiction to inquire into the offence, and with power to inflict such a sentence; as to the rest we must presume *omnia rite acta*."

Jones v. *Danvers*, 1839.

31. In the case of *Jones* v. *Danvers* (*c*) it was held that the court cannot grant a *habeas corpus* to bring up a defendant who is in military custody, for the purpose of charging him in execution for a civil debt. By the court: "We have only civil jurisdiction, and have no authority to change the custody in such a case as this."

Instances of discharge obtained by writ.

32. In the two following cases the prisoner was discharged by means of a writ of *habeas corpus;* in the first case because the return did not sufficiently show the military character and obligations of the prisoner, in the second for want of jurisdiction in the officer who confirmed the sentence of the court-martial.

Douglas' case, 1842.

33. Captain Douglas, of the 49th Madras Native Infantry, was committed by a magistrate to prison as a deserter, and afterwards by authority of the Secretary at War was given up to Lieut.-Colonel Hay, commanding the East India Company's troops at Chatham, and by him removed under military arrest to that place. A *habeas corpus* was thereupon obtained addressed to Colonel Hay and every officer or person having the custody of Captain Douglas, and he was brought into court in obedience to the writ. The return to the writ alleged that the prisoner was detained as a deserter under 5 & 6 Vict. c. 12, s. 22, but did not expressly show that he was a soldier and ought to be with his corps. Captain Douglas was in consequence discharged (*d*).

Porrett's case, 1844.

34. Porrett, a soldier of the Bombay Army, was sentenced by a general court-martial to seven years' transportation for embezzlement. The sentence of the court-martial was confirmed by Sir C. Napier, the Governor of Sindh. A writ of *habeas*

(*a*) In the case of Lieut. Hall (*R.* v. *Cuming*, *E. p. Hall*, L. R. 19 Q. B. D. 13), a writ of *habeas corpus* was applied for to discharge a lieutenant in the Navy who had been arrested by order of the Admiralty for alleged desertion, and was detained as a prisoner on board one of Her Majesty's ships under the command of Captain Cuming, with a view of being brought to trial before a court-martial. The court admitted Lieut. Hall to bail while the case was pending, but ultimately refused the writ.

(*b*) *R.* v. *Suddis*, 1 East, 306.

(*c*) 5 M. & W. 234.

(*d*) 3 Q. B. 825.

corpus was obtained and Porrett was discharged, as it was shown that Sir C. Napier had no power to confirm the sentence of the court (*a*). Had the question been one of military procedure instead of jurisdiction, the result would doubtless have been different.

Allen's case, 1860.

35. When a military prisoner is detained in a prison without any legal warrant or order for his custody in that prison, he can obtain his discharge by *habeas corpus*. In 1859 Lieutenant W. H. C. Allen was tried by a general court-martial at Shahjehanpore for the murder of his native servant, and, being found guilty of manslaughter, was sentenced to four years' imprisonment without hard labour. General Lord Clyde confirmed the sentence, and ordered him to be imprisoned in the Fort of Agra. On the 29th November 1859, Lord Clyde gave a written order for his removal in military custody to England, there to undergo the remainder of his sentence. On arrival he was successively committed to Millbank, the military prison at Weedon, Newgate, and the Queen's Prison. After having been four months in the Queen's Prison he applied to the Court of Queen's Bench for a writ of *habeas corpus* on the ground that his detention was illegal, there being no such written order as required by the Mutiny Act to the keeper of the Queen's Prison to receive Lieutenant Allen into his custody. In the result the prisoner was discharged.

Observations of Chief Justice Cockburn.

36. The Chief Justice Cockburn observed that it was enough to say that there was no order in writing under the provisions of the Mutiny Act by virtue of which the keeper of the Queen's Prison could detain Lieutenant Allen. All that appeared was that Lord Clyde, the commanding officer of the district, having first directed that Lieutenant Allen should be placed in Agra, afterwards made an order for his removal to this country to undergo the remainder of his sentence; but it did not appear that either the officer commanding the regiment, or Lord Clyde, had made any order on the keeper of the Queen's Prison to receive Lieutenant Allen. The deficiency was attempted to be made up by an order under the hand of the Adjutant-General representing the Commander-in-Chief, and stating that Lieutenant Allen had been convicted by a court-martial in India. That, however, was not a legal warrant, and under the circumstances the court was constrained, though unwillingly, to discharge the prisoner (*b*).

Military custody not now illegal by reason merely of informality, &c.

37. It is now provided by the Army Act (*c*), that, where a military prisoner is for the time being in any custody in which he *might* legally be kept, informality or error in the order or warrant, or the authority by or in pursuance whereof he is detained, shall not make the custody illegal; and any such order or warrant may be amended. A case such as that of Lieutenant Allen can, therefore, scarcely occur again.

Application for attachment against officer failing to make return.

38. Where a writ of *habeas corpus* was issued to an officer to produce a recruit who was detained as a deserter, and the officer by direction of the Horse Guards discharged the prisoner, and made no return, the court were of opinion that he ought to have returned the fact of the discharge, but would not grant an attachment for contempt (*d*).

Canadian case cited

39. In Simmons on Courts-martial (*e*) a case is cited of a store-keeper who had been convicted by court-martial under the 17th

(*a*) Perry's Oriental cases, 414.
(*b*) 30 L. J. (N.S.), Q. B., 38; 7 Jurist (N.S.), 234.
(*c*) Section 172 (4), and see also sect. 165.
(*d*) *Re Gavin*, 15 Jurist, 329.
(*e*) 7th edn., p. 165.

Ch. VIII.

in Simmons on Courts-martial.

Section of the Mutiny Act on a charge of embezzling or fraudulently misapplying, and imprisoned in a civil gaol, obtaining his release by *habeas corpus* from the Court of Queen's Bench at Montreal. The court adjudged the commitment to be void by reason of the form of charge and finding, and ordered the prisoner to be discharged, "because the charge and conviction were in the alternative . . . . without any certainty as to any or either of the two charges in the disjunctive, and this is matter of substance."

(iv.) *Actions for Damages.*

Actions against members of courts-martial and individual officers.

40. It is a general rule of law that magistrates and others, who, acting without jurisdiction, or in excess of their jurisdiction, violate the personal rights of any person by causing his arrest, imprisonment, or otherwise, are liable to an action for damages (*a*). Accordingly, members of a court-martial who try a person not subject to military law, or for an act which is not an offence cognisable by them, or who pass a sentence which they have no power to pass, are all liable to an action at the suit of the person aggrieved; and the officer who confirmed the proceedings will also be liable (*b*). The same rule is applied to officers in the exercise of individual authority; so soon as they transgress the bounds of their lawful authority they expose themselves to an action, though they may have acted with entire *bonâ fides*.

Illegal sentence by court-martial. *Frye* v. *Ogle*, 1743.

41. The case of Lieutenant Frye (*c*), which occurred in 1743, and is especially remarkable from its sequel, is a leading authority respecting the liability of all who are parties to an illegal sentence passed by a court-martial. Lieutenant Frye, of the Marines, was brought to a court-martial at Port Royal, in Jamaica, by his captain, for disobedience in refusing to assist another lieutenant in carrying an officer prisoner on board ship without a written order from the captain. Part of the evidence produced against Lieutenant Frye at the court-martial consisted of depositions made by illiterate natives, whom he had never seen or heard of, and reduced into writing several days before he was brought to trial; and upon his objecting to the evidence he was brow-beaten and overruled. Lieutenant Frye was sentenced to 15 years' imprisonment, and rendered for ever incapable of serving His Majesty, though the Court had only power to award two years' imprisonment. On his arrival in England, his case was laid before the Privy Council and the punishment remitted by His Majesty.

Damages recovered by Lieut. Frye.

42. Some time afterwards he brought an action in the Court of Common Pleas against Sir Chaloner Ogle, the president of the court-martial, and obtained a verdict in his favour for 1,000*l.* damages. The Chief Justice Willes, moreover, informed him that he was at liberty to bring his action against any of the other members of the court-martial (*d*). Accordingly Lieutenant Fry obtained writs against Rear-Admiral Mayne and Captain Renton which were served on them at the breaking up of another court-

(*a*) *Crepps* v. *Durden*, 1 Smith Lead. Ca., 11th edn., 651.

(*b*) *Frye* v. *Ogle* McArthur on Courts-martial, 4th edn., i. p. 268; *Comyn* v. *Sabine*, cited in 1 Smith Lead. Ca., 11th edn., 600.

(*c*) McArthur on Courts-martial, 4th edn., i. p. 268, and App. XXIV.

(*d*) This dictum of the Chief Justice cannot be considered law. From *Brinsmead* v. *Harrison*, L. R. 7 C. P. 547, it seems to be conclusively settled that a judgment obtained in an action against one or two or more wrongdoers is a bar to an action against the others for the same cause, even though the judgment remains unsatisfied. The injured party can, however, sue all the wrongdoers together in the first instance; and if he only sues one, the court has power to make the others parties to the action.

martial held on Vice-Admiral Lestock at Deptford at which they were members.

Sequel of this case.

43. The members of this court highly resented this proceeding, and drew up resolutions, in which they expressed themselves with some acrimony against the Chief Justice, and forwarded them to the Lords of the Admiralty. In these resolutions they demanded "satisfaction for the high insult on their president, from all "persons how high soever in office, who have set on foot this "arrest, or in any degree advised or promoted it." The Lords of the Admiralty laid the resolutions before His Majesty; and the Duke of Newcastle, by His Majesty's command, wrote to the Lords of the Admiralty, expressing "His Majesty's great displeasure at "the insult offered to the court-martial, by which the military "discipline of the navy is so much affected; and the King "highly disapproves of the conduct of Lieutenant Frye on the "occasion."

Vindication by the Chief Justice of his authority.

44. The Chief Justice, as soon as he heard of the resolutions o the court-martial, caused each individual member to be taken into custody, and was proceeding further to assert and maintain the authority of his office, when the following submission (signed by the president and all the members of the court-martial on Vice-Admiral Lestock) was transmitted to him: "As nothing is more becoming a gentleman than to acknowledge himself to be in the wrong, so soon as he is sensible he is so, and to make satisfaction to any person he has injured: we therefore whose names are underwritten, being thoroughly convinced that we were entirely mistaken in the opinion we had conceived of Mr. Chief Justice Willes, think ourselves obliged in honour, as well as justice, to make him satisfaction as far as is in our power. And as the injury we did him was of a public nature, we do in this public manner, declare that we are now satisfied the reflections cast upon him in our resolutions of the 16th and 21st of May last were unjust, unwarrantable, and without any foundation whatsoever: and we do ask pardon of his Lordship and of the Court of Common Pleas, for the indignity offered both to him and the Court." This paper was dated the 10th November, 1746, and on its reception in the Court of Common Pleas was read aloud and ordered to be registered "as a memorial," said the Chief Justice, "to the present and future ages, that whosoever set themselves up in opposition to the law or think themselves above the law, will in the end find themselves mistaken."

Observations of Lawrence, J.

45. It was observed with respect to this case by Lawrence, J., in *Warden* v. *Bailey* (*a*), that Lieutenant Frye did not appear to have been legally imprisoned at first, because the matter charged against him did not amount to any offence.

Illegal imprisonment by president of court-martial.

46. In 1804, Colonel More brought an action against Colonel Bastard, the president of a court-martial, for having ordered his imprisonment on the charge of having suborned a witness before the court. Colonel More was also a witness. He obtained a verdict with 300*l.* damages, Lord Mansfield remarking that a court-martial has no power of imprisoning a witness except for impropriety of conduct (*b*).

Illegal command by superior officer.

47. In the case of *Warden* v. *Bailey* (*c*) it was decided that an

(*a*) 4 Taunt., 76.

(*b*) *More* v. *Bastard*, cited in *Warden* v. *Bailey*, 4 Taunt., 70. In an action brought at Calcutta in 1841, a reporter recovered nominal damages against the president of a court-martial for having ordered the forcible seizure of his notes, which he had persisted in taking after being ordered to desist. *Ricketts* v. *Walker*, Hough, Mil. Precedents, 718.

(*c*) 4 Taunt., 67.

Ch. VIII.

action lies for imprisoning a man for disobedience to an order given without jurisdiction by his military superior.

Warden v. *Bailey*, 1810.

48. Warden was a permanent serjeant of the Bedford militia, and, in common with the other non-commissioned officers of the regiment, was ordered by the colonel to attend an evening school, and to pay 8*d.* a week towards the expenses of the school. Having neglected to obey this order, Warden was reprimanded for his conduct, and was afterwards, by direction of the adjutant, arrested and imprisoned in Bedford gaol, and subsequently tried by court-martial for mutinous words spoken on parade, and for thereby exciting others to disobedience, but was acquitted, and liberated in March, 1810. On this he brought his action against the adjutant, but was non-suited by Grose, J., on the ground that after the decision in *Sutton* v. *Johnstone* (*a*) he could not try the question of the propriety of the arrest.

Non-suit set aside, and new trial granted.

49. This non-suit was set aside by the Court of Common Pleas, and a new trial granted, the court thinking that the order to attend school was most probably bad in law, and the order for payment of money certainly so. The case is most material as an instance of a court of law considering whether an order given by military authority is or is not within the scope of that authority; and as discountenancing the duty of absolute obedience in a soldier enunciated in *Sutton* v. *Johnstone* (*b*).

Opinion of the Exchequer Chamber in *Dawkins* v. *Rokeby*.

50. In the recent case, however, of *Dawkins* v. *Rokeby* (*c*), the unanimous opinion of ten judges, sitting in the Exchequer Chamber, is distinctly expressed, that cases involving questions of military discipline and military duty alone, are cognisable only by a military tribunal, and not by a court of law; and *Warden* v. *Bailey* is distinguished, on the ground that the act there complained of was a wrongful and illegal act, without any colour of law. The distinction cannot be considered quite satisfactory, as, in order to decide that the act was illegal, the court must have gone more or less into questions of military discipline and duty.

Illegal execution of sentence.

51. Where the sentence was legal, but the prisoner has been imprisoned in a place to which he was not legally committed, the keeper of the prison and the person who issued the warrant will both be liable; and any officer commanding will also be liable in respect of the issue of the warrant by a subordinate officer for whom he is responsible (*d*); notwithstanding the ordinary rule, that where the superior did not appoint the subordinate officer, he is not responsible for the acts of that officer.

Excessive corporal punishment.

52. In several cases heavy damages have been recovered in respect of the unauthorized infliction of corporal punishment. Thus a seaman recovered damages in an action against Captain Tonyn, R.N.,

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(*a*) See below, para. 67.

(*b*) See in particular the argument on the part of the defendant, which enunciated the doctrine of absolute obedience, and was virtually overruled by the court. The court, however, expressed a strong wish that the case should not be tried again, saying that "disputes respecting the extent of military discipline are "greatly to be deprecated, especially in time of war; they are of the worst conse-"quences, and such as no good subject will wish to see discussed in a civil action: "they ought only to be the subject of arrangement between military men." The result of the new trial was that the plaintiff obtained a verdict, but this verdict was afterwards set aside by the Court of Error, and judgment entered for the defendant on the ground that Warden was in fact imprisoned for the use of mutinous language, and that there was probable cause for the imprisonment which justified the defendant.—*Bailey* v. *Warden*, 4 M. & S. 400. As to probable cause, see *Sutton* v. *Johnstone*, below, para. 67.

(*c*) L. R., 8 Q. B., 255; aff. L. R., 7 H. L., 744.

(*d*) See the case of Lieut. Allen above (para. 35), who subsequently recovered 50*l.* damages against the Governor of the military prison at Weedon. *Allen* v. *Boyle* "Times," March 4, 1861; but as to the present law, see paragraph 37.

for the infliction of several dozen lashes without a court-martial; the custom of the navy only permitting a commanding officer to inflict summarily one dozen lashes (*a*).

A similar action was brought against Colonel Bailey, of the Middlesex Militia, for improperly flogging a private, and 600*l.* damages were awarded. And in an action tried in 1793 at the Devon Assizes against the officers of the Devon Militia for inflicting 1,000 lashes on the plaintiff, who had been found guilty of a charge of mutiny, though the only act proved against him was that he had written to the colonel a letter telling him that the men were discontented, which was not communicated to anyone else, the plaintiff recovered 500*l.* or 600*l.* damages (*b*).

Trial by court-martial of civilian.

53. Officers who are instrumental in dealing with a person not subject to military law as if he were so subject, clearly are liable to make reparation to the person aggrieved. This was illustrated as early as 1738 by the case of *Comyn* v. *Sabine* (*c*).

Comyn was a master carpenter of the office of ordnance at Gibraltar, and brought an action against the Governor-General Sabine for having confirmed the sentence of a court-martial which awarded him the punishment of 500 lashes. It was shown that the carpenters of the office of ordnance were not subject to military law, and the jury found the Governor to be liable, as having had a share in the sentence, and gave 500*l.* damages. Lord Mansfield, citing the case in *Mostyn* v. *Fabrigas* (*d*), said, "The "Governor was very ably defended, but nobody thought the action "would not lie."

Further instances of actions by civilians.

54. The following cases are further instances of civilians recovering damages from officers in respect of a mistaken and unjustifiable exercise of their military authority.

In *Glynn* v. *Houston* (*e*) Mr. Glynn, a British merchant residing at Gibraltar, recovered 50*l.* damages from General Sir William Houston, the acting Governor, for having caused Mr. Glynn's premises to be surrounded with a detachment of troops, while a house immediately adjoining was searched for the person of Torrijos, a Spanish general; and for having during the search (which was unsuccessful) prevented Mr. Glynn from leaving his house by placing a sentinel with fixed bayonet at the door.

In *Goodes* v. *Lieutenant-Colonel Wheatly* (*f*), the plaintiff was doing duty as constable at St. James's Palace, and had occasion to desire Lieutenant-Colonel Wheatly, of the Guards, who was not in uniform, to walk on, whereupon Colonel Wheatly marched Goodes off to the guard-room by a file of grenadiers, and confined him there several hours. The plaintiff was non-suited, but, it would appear, solely in consequence of a failure in the proof of his appointment as a constable for St. James's parish.

In the case where the captain of an East Indiaman, on two strange sails (supposed to be enemies) being descried, mustered all hands and passengers, and assigned them stations for the defence of the ship, and the plaintiff, one of the passengers, refused to go to his station, and was thereupon, by order of the captain, carried there and kept in irons all night, it was held by Lord Ellenborough that though the captain might have been justified in confining

(*a*) Prendergast, Law relating to Officers of the Navy, 2nd edn., p. 185. Cited in *Warden* v. *Bailey*, 4 Taunt., 71.
(*b*) Cited in *Warden* v. *Bailey*, 4 Taunt., 70.
(*c*) Cited in *Mostyn* v. *Fabrigas*, 1 Smith Lead Ca., 11th edn., 600.
(*d*) 1 Smith Lead Ca., 11th edn., 608.
(*e*) 2 Man & Gr., 337.
(*f*) 1 Campbell, 231.

the plaintiff for his refusal to obey orders, yet he had exceeded his authority in keeping the plaintiff in irons all night, and the jury gave 80*l.* damages (*a*).

Bona fides does not excuse an illegal act.

55. Where an act complained of is itself unlawful, *bona fides* or honesty of purpose is no excuse, as appears from two cases cited by Lord Mansfield in *Mostyn* v. *Fabrigas* (*b*). Captain Gambier, by order of Admiral Boscawen, pulled down the houses of some sutlers on the coast of Nova Scotia, who supplied the sailors frequenting them with spirituous liquors, whereby their health was injured. One of the sutlers came over to England, and brought an action against Captain Gambier, in which he recovered 1,000*l.* damages. The second case cited by Lord Mansfield, in which Admiral Palliser was sued for destroying some fishing huts erected by Canadians on the Labrador coast, went off upon a reference; but it does not seem to have been questioned that the action lay.

Immaterial that cause of action arose abroad.

56. The right to bring an action in the courts of this country in a case where the cause of action arose abroad does not seem to have been conclusively established till the decision in 1774 of *Mostyn* v. *Fabrigas* (*c*).

Mostyn v. *Fabrigas*, 1774.

57. Fabrigas, a native of Minorca, brought an action against General Mostyn, Governor of that island, for having, without trial, imprisoned and banished him from the island, and recovered 3,000*l.* damages. On a bill of exceptions, the point that, where the cause of action arises abroad, the courts of this country have no jurisdiction, was elaborately argued; but Lord Mansfield, delivering the judgment of the court, emphatically laid down that actions of this description may be brought in England, though the matter arises in foreign parts. He also, with no less emphasis, repudiated the argument addressed to him, that the defendant was entitled to protection from an action by reason of his character as Governor.

Members of courts-martial not liable for mere errors of judgment.

58. For mere errors of judgment, members of a court-martial cannot be made responsible any more than civil judges and magistrates. "Even inferior justices and those not of record," says Lord Tenterden, in *Garnett* v. *Ferrand* (*d*) "cannot be called in question for an error of judgment so long as they act within the bounds of their jurisdiction. In the imperfection of human nature it is better even that an individual should occasionally suffer a wrong than that the general course of justice should be impeded and fettered by constant and perpetual restraints and apprehensions on the part of those who are to administer it. Corruption is quite another matter, so also are neglect of duty and misconduct in it. For these, I trust, there is, and always will be, some due course of punishment by public prosecution."

Abuse of military authority.

59. Notwithstanding the reluctance of the courts of law to interfere with the exercise of military authority over those subjected to military law, and though (speaking generally) all acts done in the course of military duty are justified—yet if military authority is exercised with excessive severity, oppression, or cruelty, so that the exercise, in fact, amounts to an abuse of

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(*a*) *Boyce* v. *Bayliffe*, 1 Campbell, 58.

(*b*) 1 Smith Lead. Ca., 11th edn., pp. 613, 614.

(*c*) 1 Smith Lead. Ca., 11th edn., p. 591. For historical sketch of the law relating to venue, formerly of much greater importance than at present, see *id.* p. 615, and *seq.* See also *British South Africa Company* v. *Companhia de Moçambique*, L. R. (1893), A. C. 602.

(*d*) 6 Barn. and C. 9 Dowl. and R. 657. See also *Scott* v. *Stansfield*, L. R., 3 Ex. 220, where the law is laid down in similar terms.

jurisdiction, then the justification is destroyed, and the person injured may recover damages (*a*).

Wall v. Macnamara.

60. Thus, in *Wall* v. *Macnamara* (*b*), the plaintiff, a captain in the African Corps, brought an action against the Lieutenant-Governor of Senegambia for imprisoning him for nine months at Gambia, in Africa. The defence was a justification of the imprisonment under the Mutiny Act, for disobedience of orders. At the trial it appeared that the imprisonment of Captain Wall, which was at first legal—namely, for leaving his post without leave from his commanding officer, though in a bad state of health—had been aggravated with many circumstances of cruelty. Lord Mansfield, in summing up, said, "In trying the legality of acts done by military officers in the execution of their duty, particularly beyond the seas, where cases may occur without the possibility of application for proper advice, great latitude ought to be allowed, and they ought not to suffer for a slip of form, if their intention appears by the evidence to have been upright. . . . . Thus the principal inquiry to be made by a court of justice is, *how the heart stood?* and if there appears to be nothing wrong there great latitude will be allowed for misapprehension or mistake. But, on the other hand, if the heart is wrong, if cruelty, malice, and oppression appear to have occasioned or aggravated the imprisonment or other injury complained of, they shall not cover themselves with the thin veil of legal forms, nor escape under cover of a justification, the most technically regular, from that punishment which it is your province and your duty to inflict on so scandalous an abuse of public trust. It is admitted that the plaintiff was to blame in leaving his post, but there was no enemy, no mutiny, no danger, his health was declining, and he trusted to the benevolence of the defendant to consider the circumstances under which he acted. But supposing it to have been the defendant's duty to call him to a military account for his misconduct, what apology is there for denying him the use of the common air, in a sultry climate, and shutting him up in a gloomy prison, where there was no possibility of bringing him to trial for several months, there not being a sufficient number of officers to form a court-martial? These circumstances, independent of the direct evidence of malice, as sworn to by one of the witnesses, are sufficient for you to presume a bad, malignant motive in the defendant, which would destroy his justification, had it even been within the powers delegated to the defendant by the commission." The jury found a verdict for Captain Wall, with 1,000*l.* damages (*c*).

Where jurisdiction exists, action only lies if malice can be inferred.

61. If an officer is exercising a legal jurisdiction possessed by him, he can, as a rule, only render himself liable to an action by exercising it with such circumstances of undue severity and oppression as to justify a jury in inferring malice. There are, however, one or two cases from which it would appear that even where injustice or oppression is the result of mere carelessness,

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(*a*) See the judgment of the Court of Exchequer delivered by Baron Eyre in *Sutton* v. *Johnstone*, 1 T. R. at p. 504: "And one may observe in general in respect of what is done under powers incident to situations, that there is a wide difference between indulging to situation a latitude touching the *extent* of power, and touching the *abuse* of it. Cases may be put of situations so critical that the power ought to be unbounded; but it is impossible to state a case where it is necessary that it should be abused, and it is the felicity of those who live under a free constitution of government *that it is equally impossible to state a case where it can be abused with impunity.*"

(*b*) Cited in *Sutton* v. *Johnstone*, 1 T. R. 536.

(*c*) As to criminal liability for abuse of authority, see below, para. 91, *et seq.*

Ch. VIII.

and not of any bad intention, the officer guilty of such conduct may be held liable.

Swinton v. *Molloy.*

62. Captain Molloy, of Her Majesty's ship Trident, kept the purser Swinton in confinement for three days without inquiring into the case, and then, on hearing his defence, released him. The purser brought an action against Captain Molloy, and on the evidence Lord Mansfield said that such conduct on the part of the captain did not appear to have been a proper discharge of his duty, and, therefore, that his justification under the discipline of the Navy had failed him. It does not appear from the citation of this case in the Term Reports what the verdict in this case was (*a*).

Custom of the service may be a justification.

63. On the other hand, the custom of the service, if not inconsistent with the law of the land, may be a justification of an act done in pursuance of such custom. For example, in an action by a midshipman against his first lieutenant for having caused him, on his refusal to go to the masthead, to be hoisted thither by a party of seamen, mast heading was proved to be a customary punishment of the service, and the Chief Justice ruled that it was a justification (*b*).

Grant v. *Shard.*

64. In *Grant* v. *Shard* (*c*) violent language and striking a subordinate officer on duty were held actionable. Grant was directed to give a military order, and it appeared that he sent two persons, who failed. Shard thereupon said to Grant, "What a stupid person you are," and twice struck him. Although the circumstances occurred in the actual execution of military service, it was held that the action was maintainable, and a verdict was found for the plaintiff, with 20*l.* damages. An application was afterwards made to the Court of King's Bench to set aside the verdict, but the court, after argument, refused to disturb it, though Lord Mansfield was desirous to grant a new trial. The above cases of *Swinton* v. *Molloy* and *Grant* v. *Shard* are no doubt strong ones, and it would probably be now held in similar circumstances that the aggrieved person could only seek redress at the hands of the military authorities.

Civilians protected against abuse of military authority.

65. Civilians will always be protected by courts of law against the arbitrary and oppressive exercise of military jurisdiction (*d*).

Thus, *Sutherland* v. *Murray* (*e*) was an action brought in 1783 by Mr. Sutherland, a judge in Minorca, against General Murray for improperly suspending him from his office. The General had professed himself ready to restore the judge on his making a particular apology; and on reference to the home authorities the King approved of the suspension unless the Governor's terms were complied with. It was admitted that General Murray had power to suspend the judge for proper cause; yet on the proof of his having unreasonably and improperly exercised that authority, and notwithstanding the King's approbation of his proceedings, damages to the amount of 5,000*l.* were awarded against him by the jury.

Acts complained of as done maliciously and without

66. The class of cases last referred to occupy a sort of intermediate position between cases where the act complained of is

(*a*) *Swinton* v. *Molloy*, cited in *Sutton* v. *Johnstone*, 1 T.R. 537. Prendergast, Law Relating to Officers of the Navy, Part II, 374, cites another very similar case which occurred in 1823.

(*b*) Prendergast, Part II, 377.

(*c*) Cited in *Warden* v. *Bailey*, 4 Taunt., at p. 85.

(*d*) See paras. 53–55 above.

(*e*) Cited in *Sutton* v. *Johnstone*, 1 T. R., 538. The facts of this case are not very fully or clearly given in 1 T. R.; and it may be questioned whether it does not more properly belong to the class of cases next referred to.

done without jurisdiction, and the cases where an act, in itself a legal exercise of military authority towards a person subject to military law, is charged as done maliciously and without probable cause.

probable cause.

67. In this latter class of cases no action can be maintained, unless the plaintiff avers and proves that the act complained of was done without probable cause (*a*). This proposition was laid down by Lords Mansfield and Loughborough in 1786 in the great case of *Sutton* v. *Johnstone* (*Johnstone* v. *Sutton*, in error) (*b*), and has never since been disputed.

Sutton v. *Johnstone*, 1786.

The circumstances of *Sutton* v. *Johnstone* were as follows:—The plaintiff Sutton was captain of His Majesty's ship Isis, which formed part of a squadron under the command of the defendant Johnstone. On the 16th April, 1781, there being war between the United States and the French on the one hand, and the English on the other, the defendant Johnstone ordered the ships under his command to pursue the French fleet, and signalled to Sutton to slip his cable in order to engage the enemy. Sutton having failed to slip his cable, the defendant Johnstone caused him to be brought to a court-martial on the ground of his having "delayed and discouraged the public service on which he was ordered," and for disobedience of orders in not slipping his cable and putting to sea. Sutton admitted on the trial by court-martial that he had disobeyed the orders, but averred that he did not wilfully and willingly disobey them by reason that he was physically incapable of obeying them. The court-martial found that Sutton was justified in not immediately slipping his cable owing to the state in which his ship was, and that he did not delay the public service, and adjudged him to be honourably acquitted. Upon this, Sutton brought an action against Johnstone for having maliciously and without probable cause charged him with the crime of disobedience of orders and the delay of the public service.

68. Practically, two important questions were raised in the case. First, whether an action for malicious prosecution would lie by a subordinate officer against his superior officer for an act done in the course of discipline and under powers incident to his situation; secondly, whether, supposing such an action would lie, Johnstone had or had not probable cause for charging the plaintiff with disobedience to his orders, and delaying the public service, and therefore for bringing him to a court-martial.

Questions raised in this case.

69. The case was twice tried before the Chief Baron at Guildhall, and the plaintiff Sutton recovered 5,000*l.* damages on the first trial and 6,000*l.* on the second. A motion was then made in the Court of Exchequer in arrest of judgment, and upon this two points were raised: first, whether the action would lie; secondly, whether if it did lie, the plaintiff was entitled in law to keep the verdict. The Court of Exchequer decided that the action would lie, on the ground apparently (p. 504) that "all men hold their situations in this country upon the terms of submitting to have their conduct examined and measured by that standard which the law has established."

Result of trials, and decision of Court of Exchequer.

The court further decided that the plaintiff was entitled in law to hold his verdict on the grounds (p. 507), that, admitting for the sake of argument, that probable cause appeared for the charge of *disobedience*, yet no probable cause appeared for the charge of *delaying the public service*, of which the plaintiff had been acquitted

(*a*) This expression is used in the judgments in *Sutton* v. *Johnstone*, and throughout this chapter, as equivalent to "reasonable and probable cause."
(*b*) 1 T. R. 493, 784; 1 Bro. P. C. 78.

Ch. VIII.

by the court-martial, and that this was enough to support the verdict. The court observed :—

"The plaintiff charges the defendant with having maliciously and without probable cause brought the plaintiff to a court-martial upon one charge" (that of delaying the public service), "for which there was not a probable cause, and upon another charge" (that of disobedience of orders), "for which there was probable cause. The declaration is therefore *felo de se* with respect to the latter, but good as to the former. In that case, after a verdict, the jury must be taken to have given damages for that part of the case only which is actionable." The rule therefore for arresting the judgment was discharged.

Reversal of decision of Court of Exchequer by Exchequer Chamber.

70. Shortly afterwards Johnstone brought a writ of error in the Exchequer Chamber, and the judgment of the Court below was reversed. Taking the second point first, whether there was or was not probable cause for bringing Sutton to a court-martial, the court, Lords Mansfield and Loughborough, stated (p. 547) :—

"Under all these circumstances,—it being clear that the orders were given, heard, and understood, that in fact they were not obeyed, that by not being obeyed the enemy were enabled the better to sail off, that the defence was an impossibility to obey (a most complicated point)—under all these circumstances we have no difficulty to give our opinion that in law the commodore (Johnstone) had a probable cause to bring the plaintiff (Sutton) to a fair and impartial trial" (*a*). The court further declared that "nothing less than a physical impossibility to obey could be a justification. A subordinate officer must not judge of the danger, propriety, expediency, or consequence, of the order he receives ; he must obey. Nothing can excuse him but a physical impossibility. A forlorn hope is devoted, many gallant officers have been devoted, fleets have been saved and victories obtained, by ordering particular ships upon desperate services, with almost a certainty of death or capture" (p. 546).

On the first point whether the action would lie, the court observed (p. 550) that it was not necessary to give judgment, because, supposing the action did lie, the court thought judgment ought to be given for the defendant. The court, however, was inclined to lean against the action lying, on the ground that a Commander-in-Chief has a discretionary power by the sea military code to put any man in the fleet upon his trial, that a court-martial alone can judge of the charge, that if the power of the Commander-in-Chief was abused, such an abuse was provided against by the 33rd Article of War, and that a commander who arrested, suspended, or put a man on his trial without probable cause might be tried by court-martial and punished accordingly.

The court said (p. 549) :—"Commanders in a day of battle must act upon delicate suspicions, upon the evidence of their own eye ; they must give desperate commands ; they must require instantaneous obedience. In case of a general misbehaviour they may be forced to suspend several officers and put others in their places. A military tribunal is capable of feeling all these circumstances, and understanding that the first, second, and third part of a soldier is obedience. But what condition will a commander be in if upon the exercising of his authority he is liable to be tried by a common law judicature ? If this action is admitted, every acquittal before a court-martial will produce one. Not knowing the law, or

(*a*) It is settled that what constitutes probable cause is a question to be determined by the judge on the facts found by the jury. *Lister* v. *Perryman*, L.R. 4 H.L. 521.

the rules of evidence, no commander or superior officer will dare to act; their inferiors will insult and threaten them. The relaxation and decay of discipline in the fleet has been severely felt. Upon an unsuccessful battle there are mutual recriminations, mutual charges, and mutual trials; the whole fleet take sides with great animosity, party prejudices mix. If every trial is to be followed by an action, it is easy to see how endless the confusion, how infinite the mischief will be. The person unjustly accused is not without his remedy: he has the properest amongst military men; reparation is done to him by an acquittal, and he who accused him unjustly is blasted for ever and dismissed the service."

The judgment of the Court of Exchequer Chamber was confirmed by the House of Lords (*a*).

Probably no action lies for an act within limits of military authority even where done maliciously and without probable cause.

71. The decision in *Sutton* v. *Johnstone* (*b*), proceeded solely on the ground that in that particular case there was probable cause for bringing Sutton to a court-martial, and the question raised, but not decided in that case, viz., whether an action by a person subject to military law would lie against an officer for an act within the limits of his authority, but done maliciously and without probable cause, long remained one on which judicial opinion was divided. Lords Loughborough and Mansfield, in *Sutton* v. *Johnstone*, plainly inclined to the view that such an action would not lie (*c*), and this view was explicitly affirmed by Mellor, Lush, and Hayes, J.J. in *Dawkins* v. *Paulet* (*d*); while Cockburn, C.J., as explicitly rejected it. Having regard, however, to the recent case of *Marks* v. *Frogley* (*e*), the correct view seems to be (though the point would still be open to argument in the House of Lords) that such an action would not lie, and that as between persons both subject to military law the mode of redress given by the Army Act is the only mode of redress, and that the Civil Courts cannot be invoked for the purpose.

The mode of redress in these cases is that prescribed by ss. 42 and 43 of the Army Act, which extend the provisions of the former Articles of War, 12 and 13, in favour of the soldier.

Actions for libel.

75. For statements made by an officer in the discharge of his military duty, even though the statements are made maliciously and with the knowledge that they are false, it has in one case been held that an action for libel will not lie (*f*).

(*a*) 1 Bro. Parl. Ca., 76. *Barwis* v. *Keppel*, 2 Wils., 314, decided in 1766, as far as it goes supports the decision. Barwis, a discharged sergeant of the Guards, obtained a verdict with 70*l.* damages against Major Keppel, as acting commander of the regiment, for maliciously and without any reasonable (probable) cause reducing the plaintiff to the rank of a private for neglect of duty during the campaign of the King's forces in Germany under Prince Ferdinand in 1761. But on a case reserved for their opinion, the court said: "By the Act of Parliament to punish mutiny and desertion the King's power to make Articles of War is confined to his own dominions; when his army is out of his dominions, he acts by virtue of his prerogative and without the statute or Articles of War; and therefore you cannot argue upon either of them, for they are both to be laid out of this case, and *flagrante bello*, the common law has never interfered with the army; *inter arma silent leges*. We think (as at present advised) we have no jurisdiction at all in this case; but if the plaintiff's counsel think proper to speak more fully in this matter, we are willing to hear him."

"But," the reporter adds, "plaintiff, seeing the opinion of the court against him, acquiesced, and the judgment was for the defendant, *ut audivi*."

(*b*) 1 T. R. 493, 784.

(*c*) But see *Warden* v. *Bailey*, 4 Taunt., at p. 89.

(*d*) L. R. 5 Q. B. 94; and see also *Keighley* v. *Bell*, 4 F. & F. 763, and *Dawkins* v. *Lord Rokeby*, L. R. 8 Q.B. at p. 271.

(*e*) [1898] 1 Q.B. 888, at pp. 899, 900.

(*f*) *Dawkins* v. *Paulet*, L.R. 5 Q. B. 94; and see the other cases cited below. In *Mitchell* v. *Kerr*, Rowe's Rep. 537, decided by the Court of King's Bench in Ireland in 1801, the defendant had written two libellous letters to the commanding officer of a regiment which the plaintiff was about to enter. At the trial the jury were directed that, if they thought the letters were written merely for the purpose of bringing the plaintiff to a court-martial, the action would not lie, and they found a verdict for the defendant, which the Court of King's Bench refused to disturb.

Dawkins v. *Paulet.*

The above-mentioned case of *Dawkins* v. *Paulet* was an action of this description brought by Lieutenant-Colonel Dawkins against Major-General Lord F. Paulet in respect of certain statements and reports regarding the military conduct and qualifications of the plaintiff, forwarded by the defendant, in the ordinary course of military duty, to the Adjutant-General for the information of the Commander-in-Chief; and it was decided that, even assuming the truth of the allegations of the plaintiff, viz., that the statements (admittedly made in the course of military duty) were made maliciously and with the knowledge that they were false, the action would not lie.

Jekyll v. *Moore.*

76. In *Jekyll* v. *Moore* (*a*) the plaintiff brought an action for libel against Sir John Moore, who had been the president of a court-martial held for the trial of Colonel Stewart of the 43rd Regiment. The court "most fully and honourably" acquitted Colonel Stewart, and appended to this finding the following remarks:—"The court cannot pass without observation the malicious and groundless accusations that have been produced by Captain Jekyll against an officer whose character has, during a long period of service, been so irreproachable as Colonel Stewart's, and the court do unanimously declare that the conduct of Captain Jekyll in endeavouring falsely to calumniate the character of his commanding officer is most highly injurious to the good of the service." The Court of Common Pleas decided that no such action could be maintained, the Chief Justice, Sir James Mansfield, observing, "If it appear that the charges are absolutely without foundation, is the president of the court-martial to remain perfectly silent on the conduct of the prosecutor, or can it be any offence for him to state that the charge is groundless and malicious? It seems to me the words complained of in the case form part of the judgment of acquittal, and consequently no action can be maintained upon it."

From this decision it would appear that comments by a court-martial censuring the conduct of a person in respect of a matter not before them would not be held privileged so as to exempt the members from an action (*b*).

Report of court of inquiry privileged.

77. The report made by a court of inquiry is absolutely privileged. In *Home* v. *Bentinck*, the plaintiff brought an action against the president of a court of inquiry for libel in publishing the contents of the report of the court, by communicating it to the Commander-in-Chief. The report contained these words: "The conduct of Lieutenant-Colonel Home does not appear to have been actuated by those high and delicate feelings of honour which in all transactions of life ought to influence an officer of high rank and reputation." The Court of Common Pleas were unanimously of opinion that the report was a privileged communication for which the officer making it could not be rendered responsible in a court of law; and that the officer who had been summoned to produce at the trial of the action the report in question and the proceedings of the court of inquiry was not bound nor even at liberty to disclose the documents in question, they being State documents and protected as such from exposure in courts of justice. This decision was confirmed on appeal to the Exchequer Chamber (*c*).

Question to be determined in

78. In this class of cases the question always is whether the libel, if it be a libel, is, to use the technical term, privileged. This

(*a*) 2 New Reports, 341.
(*b*) See Prendergast, Law Relating to Officers of the Navy, Part II, 405.
(*c*) 2 Broderip and Bingham, 130; 4 Moore, 563. See rule 124 (L).

question is very similar to that discussed above as regards want of jurisdiction. If the communication charged as libel was made by a court in the exercise of its jurisdiction, or by an advocate or witness before such a court, it is considered absolutely privileged, and no one is liable in respect of it. If it is made otherwise than in the exercise of the proper jurisdiction, it has been held not to be so privileged, but this can scarcely be considered as settled. If it is made by a person not as a judge or witness but in the discharge of his military duty, it is according to the case of *Dawkins* v. *Paulet* (*a*), absolutely privileged. In any other case, if the statement is made in furtherance or under colour of any interest or duty, it is only *primâ facie* privileged, and the privilege will be lost if actual malice or great excess is shown.

these cases that of privilege.

79. In *Dickson* v. *Wilton* (*b*) Lord Campbell directed the jury that letters from the commanding officer of a regiment to his immediate superior containing charges against the Colonel, and a conversation with a member of Parliament as to a question to be put in the House of Commons relative to the dismissal of the Colonel on these charges, are *primâ facie* privileged communications; but that if made from other motives than a sense of duty, which was a question for them to decide, the privilege would be gone. The jury found for the plaintiff with 205*l.* damages. This case, however, was never discussed on a motion for a new trial, and the Court of Exchequer Chamber observed, in *Dawkins* v. *Lord Rokeby* (*c*), that the judge who tried it was wrong in compelling the production of the documents by the Secretary for War, and in ruling that malice might be inferred by the jury from the documents themselves without other evidence.

Malice held to take away privilege. *Dickson* v. *Wilton*, *sed quære.*

80. Again in *Dickson* v. *Combermere* (*d*), an action brought by the same plaintiff as in *Dickson* v. *Wilton*, not for libel, but for conspiring to obtain the removal of the plaintiff from his command by false charges, Chief Justice Cockburn told the jury that if the charges were in their opinion made without probable cause and maliciously, *i.e.*, apparently not in the course of military duty, they must find for the plaintiff; but in this case the verdict was for the defendant.

Dickson v. *Combermere.*

81. Publishing the sentence of a court-martial to the effect that Colonel —— is dismissed from the service for gross violation of the trust reposed in him as commanding officer of the Molucca Islands is not libellous (*e*).

Publication of sentence of court-martial not a libel.

82. Nor again is a proper complaint to a superior officer or to the Secretary of State, or other authority having power to redress the matter complained of, a libel. This was decided by the Court of King's Bench in *Rex* v. *Baillie* (*f*), where the defendant, a Captain in the navy and Deputy Governor of Greenwich Hospital, had written, and distributed among the Governors of the hospital, a large volume containing an account of the abuses of the institution, and severely animadverting on the characters of some of its officers, especially Lord Sandwich, First Lord of the Admiralty. A conditional order obtained by Lord Sandwich for a criminal information against Captain Baillie for libel was discharged by the court; and Lord Mansfield said that this distribu-

Complaint to proper authorities not a libel.

(*a*) L. R., 5 Q. B. 94.
(*b*) 1 F. and F. 419.
(*c*) L. R. 8 Q. B. 255; L. R. 7 H. L. 744.
(*d*) 3 F. and F. 527.
(*e*) *Oliver* v. *Lord W. Bentinck*, 3 Taunt. 456.
(*f*) Holt on Libel, 172; 21 Howell's State Trials, at pp. 69, 70.

Ch. VIII.

tion of the work to the persons only who were from their situations bound and competent to redress the grievances in question, was not a publication sufficient to make it a libel.

R. v. *Bayley.* *Fairman* v. *Ives.*

83. In *R.* v. *Bayley* (*a*) and in *Fairman* v. *Ives* (*b*) letters had been written by the defendants to superior military authorities with the view of obtaining payment of debts due to them from the plaintiffs. In each case the circumstances of the alleged debt were stated, and fraud or concealment on the part of the plaintiff was alleged or suggested. It was held that the letters were not libels, being communications to the proper authorities having power to give redress of the alleged grievance.

Harwood v. *Green.*

84. On the other hand where a naval officer acting as government agent on board a transport wrote to Lloyd's imputing incapacity to the captain of the transport, it was held that the communication was not privileged, and the plaintiff recovered 50*l.* damages (*c*). The officer ought to have addressed his complaint to the Admiralty authorities.

Privilege of witnesses.

85. With regard to the privilege of witnesses, the decision of the Court of Exchequer Chamber in *Dawkins* v. *Lord Rokeby* (*d*) having been affirmed by the House of Lords is a conclusive authority that a court of inquiry held under the Army Act is to this extent a court, that the statements made, whether orally or in writing by witnesses summoned to give evidence, are absolutely privileged, even though made with actual malice and without probable cause. It need scarcely be observed that evidence given before a court-martial is similarly privileged.

Actions for negligence.

86. Negligence or unskilfulness in the discharge of professional duty may be actionable at the suit of a person injured by such negligence or unskilfulness. And any one committing a wrongful act or an act that cannot be justified, cannot escape liability for the offence merely because he acted in obedience to the order of the executive Government or of any officer of state (*e*).

Weaver v. *Ward.*

87. Thus in the case of *Weaver* v. *Ward* (*f*), decided in 1616, the plaintiff and defendant were both soldiers of the London trained bands, and while engaged in skirmishing by way of military exercise, Ward's musket was discharged in such a way as to wound Weaver, who thereupon brought an action of trespass against Ward. Ward's defence was that he was in training by order of the Lords of the Council, and skirmishing in obedience to military command, and that the injury happened casually, by misfortune and against his will. But this was decided not to be enough. The court said, "No man shall be excused a trespass except it may be judged utterly without his fault."

Case of *H.M.S. Volcano.*

88. In 1844 the commander of Her Majesty's ship Volcano was held liable in an action brought in the Court of Admiralty for damage occasioned by a collision between the Volcano and the brig Helen. Both vessels had sought shelter in the same bay off the coast of Spain, the Volcano taking up a berth near the Helen. During a storm at night the Volcano broke her anchor, came into collision with the Helen, and so damaged her that she sank.

(*a*) Bac. Abr. "Libel," A. 2.
(*b*) 5 Barn. and Ald. 642.
(*c*) *Harwood* v. *Green*, 3 Car. and P. 141.
(*d*) L. R. 8 Q. B. 255; 7 H. L. 744. It may be added that actions subsequently brought by Colonel Dawkins against certain members of the court of inquiry were stayed on the ground that they would not lie. *Dawkins* v. *Prince Edward of Saxe-Weimar*, L. R. 1 Q. B. D. 499.
(*e*) *Raleigh* v. *Goschen*, L. R. [1898] 1 Ch. 77.
(*f*) Hobart's Reports, 134.

The court was of opinion that the Volcano was to blame, both in taking up her original berth and also in not letting out more cable and in not dropping a second anchor; and damages were accordingly recovered from the commander (*a*).

Action by foreigner.

89. British Courts of Justice are open to subjects of friendly nations, and it has been held that a Spaniard could recover damages for seizure and detention of a cargo of slaves by a captain in the navy (*b*).

Non-liability for hostile acts done by authority of Government.

90. A British subject is not liable to actions by foreigners in respect of hostile acts done by him in the name of the Government which he serves, provided those acts are either authorised by an actual command or ratified by a subsequent approval of the Government. To such acts the maxim *respondeat superior* appears to apply; and, if the Government refuses redress, there is no remedy but an appeal to arms (*c*).

(v.) *Liability to Criminal Proceedings.*

Liability to criminal proceedings.

91. There are several authorities which show that where the death of a person is caused by some act of a military officer done without jurisdiction, the officer is criminally responsible. Thus on the case of an action against the officers of the Devon Militia above mentioned being cited in *Warden* v. *Bailey*, Mr. Justice Heath expressed his opinion that, if the plaintiff in that action had died under the punishment inflicted by order of the court-martial, all the members of the court would have been liable to be hanged for murder (*d*).

Case of *Governor Wall*, 1802.

92. In the well-known case of Governor Wall (plaintiff in the action already noticed of *Wall* v. *Macnamara*), the penalty of death was actually inflicted on Governor Wall for a crime resembling in its nature and circumstances the conduct towards himself in respect of which he recovered damages. This crime was the murder of Serjeant Benjamin Armstrong, of the African Corps, in 1782, by inflicting on him 800 lashes with such cruelty as to cause his death.

Circumstances of this case.

93. Governor Wall appears to have been arrested on the charge shortly after his return to England, but to have absconded and kept out of the way for nearly twenty years, as he was not tried till 1802. The circumstances out of which the charge arose were as follows:—In July, 1782, Mr. Wall was in command of the garrison at Goree, an island on the coast of Africa, and about to leave for home. The men of the garrison had some pecuniary compensation then due to them in respect of their having been put on a reduced allowance of provisions, and the paymaster responsible for meeting their demands was to leave together with Governor Wall. On the day before that fixed for their departure, a number of men, headed by Armstrong, twice proceeded to the house of the paymaster to obtain a settlement of their accounts. According to the evidence for the prosecution, there was no appearance of any mutiny, and no disrespectful or disorderly conduct on the part of the men, who returned to barracks when ordered to do so by Governor Wall. In the afternoon Governor Wall ordered a parade, and by his order 800 lashes were inflicted on Armstrong by black men, not with the ordinary cat, but with a description of rope. It was stated that

(*a*) "*Volcano*," 2 W. Robinson's Admiralty Rep. 337.
(*b*) *Madrazo* v. *Willes*, 3 Barn. and Ald. 353. Compare *Forbes* v. *Cochrane*, 2 Barn. and Cr. 448, in which case the plaintiff was a British subject.
(*c*) 1 Smith's Lead. Ca. 11th edn., 648, 649, and authorities there cited. *Buron* v. *Denman*, 2 Ex. 167; *Feather* v. *Reg.*, 35 L. J. (N. S.), Q. B. 200, 4 B. and S. 257.
(*d*) 4 Taunt., at p. 77.

Ch. VIII.

Governor Wall stood by urging the black men to increased severity with coarse expressions, such as "Lay on, you black ——, or I'll lay on you; cut him to the heart." Armstrong died shortly afterwards in hospital. For the defence some evidence was given that the behaviour of the men, and in particular of Armstrong, had been mutinous and that a sort of drum-head court-martial had been held which ordered the punishment; and that the death of Armstrong was accelerated by drinking spirits in hospital.

Direction of the Chief Baron to the jury.

94. Chief Baron Macdonald directed the jury that if there was no mutiny and no court-martial, and the punishment of 800 lashes with such an unusual instrument was ordered by the prisoner, there was certainly ground to infer malice; and pointed out that Governor Wall in his report of the state of the settlement on his return made no mention of the existence of any mutinous spirit in the garrison. The jury found the prisoner guilty, after deliberating for half an hour, and he was hanged at Tyburn (*a*).

Case of *Ensign Maxwell*, 1807.

95. A mistaken impression of duty will not excuse an officer, if he, without being justified by other circumstances, orders his men to fire, and some one is thereby killed, as is shown by the following case. In 1807, Ensign Maxwell, of the Lanarkshire Militia, was tried before the High Court of Justiciary in Scotland for the murder of Cottier, a French prisoner of war at Greenlaw, by improperly ordering a sentinel to fire into the room where Cottier and other prisoners were confined. Ensign Maxwell had the military charge of over 300 prisoners, confined in a building of no great strength. The prisoners were of a turbulent character, and to prevent their escape an order was given that all lights in the prison should be put out at 9 o'clock, and that if this was not done at the second call the guard was to fire upon the prisoners, who were often warned of this order. Ensign Maxwell having observed one night, on which there had been some disorder among the prisoners, a light burning beyond the appointed hour, twice ordered it to be put out, and, not being obeyed, directed the sentry to fire, but the musket merely snapped. Ensign Maxwell repeated the order, the sentry fired again, and Cottier received his mortal wound. At this time there was no symptom of disorder in the prison, and the prisoners were all in bed.

Ruling of the Lord Justice Clerk as to orders given.

96. The general instructions issued from the Adjutant-General's office for the conduct of the troops guarding the prison contained no such order as that upon which Ensign Maxwell had acted; and it appeared to be a mere verbal one which had from time to time in hearing of the officers been repeated by the corporal to the sentries on mounting guard, and had never been countermanded by those officers, who were also senior to Ensign Maxwell. The Lord Justice Clerk laid it down that Ensign Maxwell could only defend himself by proving specific orders, which he was bound to obey without discretion, and which called upon him to do what he did; and the jury found him guilty of the minor offence of culpable homicide, with a recommendation to mercy. He was sentenced to nine months' imprisonment (*b*).

R. v. *Thomas*.

97. Again in the case of *R.* v. *Thomas* (*c*) the prisoner, a sentinel on board Her Majesty's ship Achille, had been ordered to keep off all boats unless they had officers in uniform in them, or unless the officers on deck allowed them to approach; and he received a musket, three blank cartridges, and three ball cartridges. The boats pressed, upon which he repeatedly called to them to keep off;

(*a*) 28 Howell's State Trials, 51.
(*b*) Buchanan's "Remarkable Cases," Part II, 3.
(*c*) Russell on Crimes, 6th edn., iii. 94, 4 M. & S. 442.

but one of them persisted and came close under the ship, and he then fired at a man in the boat and killed him. It was put to the jury to find whether the sentinel did not fire under the mistaken impression that it was his duty, and they found that he did. But the case being reserved for the opinion of the judges, their Lordships were unanimous that it was murder. They thought it, however, a proper case for a pardon; and further, they were of opinion that if the act had been necessary for the preservation of the ship, as if the deceased had been stirring up a mutiny, the sentinel would have been justified.

How far specific commands can excuse subordinate.

98. How far a subordinate could plead the specific commands of a superior officer—such commands being not obviously improper or contrary to law—as justifying an injury inflicted on a citizen, is somewhat doubtful; though there are cases in which the fact of the orders having been given would no doubt prove the innocent intent of the subordinate, and lead practically to his acquittal on a criminal charge (*a*).

Criminal liability for offences committed out of the realm.

99. With respect to criminal liability for oppression and similar offences committed out of the realm it was enacted by 11 Will. III, c. 12 (*b*), that any governor or commander-in-chief of any colony beyond the seas guilty of oppression to any of His Majesty's subjects, or of any other crime within their respective governments or commands, might be tried and punished by the Court of King's Bench in England or by special commissioners. And the statute 42 Geo. III, c. 85, makes a similar provision for the trial and punishment of persons employed in the public service out of Great Britain in any similar military office or capacity (*c*).

Case of Sir Thomas Picton, 1806.

100. General Sir Thomas Picton was tried under this Act in 1806 for having, while Governor of Trinidad, given an order for the infliction of torture on a female from whom it was desired to obtain evidence in support of a prosecution for a robbery committed in her master's house. General Picton's defence was that the occurrence took place in the ordinary course of judicial proceedings, over which he presided as Governor, and that torture was allowed in such cases by the law of the island. The case was tried twice, and was again elaborately argued on the special verdict found at the second trial, but judgment was never prayed (*d*). It appears, however, to have been thought at the time that had the opinion of the court been delivered, judgment would have been given against General Picton, though the jury found that by the law of Spain torture existed in Trinidad at the time of the cession of that island to Great Britain, and that no malice existed in the mind of the defendant, save so far as might be inferred from the acts complained of, if found to be illegal (*e*).

Execution of sentences, &c.

101. With respect to the question how far defect in the jurisdiction or procedure of the court by whom a sentence is given, or want of authority, irregularity, or excess in the person by whom the sentence is executed, may render the court or person executing the sentence criminally responsible, there is but little to be found in the books. There appears, however, to be authority for the following propositions:—

(i.) If, first, the court who passed the sentence had no colour of

(*a*) See *R.* v. *Trainer*, 4 F. and F. 105; *Dawkins* v. *Lord Rokeby*, 4 F. and F. 806; *Keighley* v. *Bell*, 4 F. and F. 763; *R.* v. *Hutchinson*, 9 Cox Cr. Ca. 555.

(*b*) 11 & 12 Will. III, in Ruffhead.

(*c*) See also the two Acts 24 Geo. III, sess. 2, c. 25, s. 64, &c., and 26 Geo. III, c. 57, making elaborate provisions for the trial in Great Britain of British subjects for extortion and misdemeanors committed in India.

(*d*) 30 Howell State Trials, 226.

(*e*) 30 Howell State Trials, 955, note.

Ch. VIII.

jurisdiction in the matter, all its proceedings are a mere nullity, and both the court and the officer who executed the sentence are mere wrong-doers; and in the case of an execution the officer may perhaps in strictness of law be guilty of murder as a principal, and the members of the court may be guilty of a misdemeanor, and also as accessories to the murder (*a*).

(ii.) If, secondly, the court had no jurisdiction, but it acted under colour of a writ or commission, such as might lawfully be issued, then although the writ or commission be irregular and so the sentence erroneous and voidable, it seems that it is not a nullity, and that neither the court nor the officers who execute the sentence can be treated as mere wrong-doers, though the court may be guilty of a misprision (*b*). If, again, the court had jurisdiction, but passed an erroneous sentence, neither the judge nor an officer who innocently executes the sentence is criminally liable (*c*).

(iii.) The sentence must be executed by the proper officer, and if any person who is not duly authorised executes it he is a wrong-doer (*d*).

(iv.) The execution must pursue the judgment, subject to any lawful alteration by the Crown, for if a man is beheaded who ought to have been hanged, the officer is a wrong-doer (*e*).

There appears to be no authority for applying the doctrine of trespass *ab initio* to the case of irregular execution of a sentence, and it would seem that the officer would be liable only for so much of his acts as is in excess of his authority. Malice (in the popular sense of the word) in the officer appears to be wholly immaterial, so long as he keeps within the limits of his authority, for he is bound to execute the sentence; but if he grossly exceeds the measure of the sentence which he is authorised to inflict, and if he so barbarously flog a man sentenced to flogging as by plain excess to cause his death, he will be a wrong-doer as to the excess (*f*).

(vi.) *Protection of Persons Acting under the Army Act and other Acts.*

Protection of persons acting under Statute.

102. It remains only to notice that officers are to a certain extent protected against actions by s. 170 of the Army Act, which provides that an action against any person for any act done in the execution, or intended execution, of the Act, or in respect of any alleged default in the execution of the Act, must be commenced within six months. Tender of amends before the action may, in lieu of or in addition to any other plea, be pleaded. Such actions, as well as actions against members of a court-martial in respect of a sentence of such court, can only be brought in one of the superior courts in the United Kingdom (which courts have jurisdiction wherever the matter complained of occurred) or in a supreme court in India, or in a colonial court of superior jurisdiction in the colony where the matter occurred (*g*).

(*a*) Hale, Pleas of the Crown, i. 497, 501. Steph. Dig. Crim. Law (6th Edn.), Art. 218.

(*b*) Hale i. 497-509; Hawkins, Bk. i. ch. 28, s. 6.

(*c*) Hale i. 501.

(*d*) Hale i. 501, Coke, Inst. i. 128.

(*e*) Coke, Inst. iii. 52, 211; Hale i. 501.

(*f*) Hawkins, Bk. i. ch. 29, s. 5, and see *Governor Wall's case*, *supra*, paras. 92-94.

(*g*) The effect of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61) appears to be, by s. 2, to repeal subs. (2) of s. 170 of the Army Act, and by s. 1 to re-enact similar provisions with the addition of the provisions as to costs contained in paragraphs (*b*) and (*d*) of s. 1.

Subsection (3) of section 46 of the Militia Act, 1882, must be regarded as similarly modified.

In the case of persons acting under the Militia Acts, there is an analagous provision in s. 46 of the Militia Act, 1882 ; and officers acting under other Acts can avail themselves of the general provisions of the Public Authorities Protection Act, 1893 (*a*).

Application of chapter.

103. The statements of law in this chapter apply to England, but the law in Scotland, Ireland, and the colonies may be considered to be very similar.

(*a*) 56 & 57 Vict. c. 61.

CHAPTER IX.

HISTORY OF THE MILITARY FORCES OF THE CROWN.

Object of chapter.

1. The object of this chapter is to give a short summary of the history of the Military Forces, and principally of those in England For details the authorities cited in the notes must be consulted (*a*).

Two periods in history of forces.

2. The history of the English Forces may be divided into two main periods: the one prior, and the other subsequent to the Restoration of Charles the Second in 1660. It was not until after 1660 that a Standing Army was raised, and the Militia organised under Act of Parliament. Before 1660 the organisation of the Forces was much less systematic, although it rested on laws which have come down to the present time, and therefore deserve notice.

First Period.—General and Feudal Levies.

General liability to service in early times.

3. Before the Norman Conquest, all freemen between the ages of 15 and 60 who were capable of bearing arms were bound to go forth to the host (*fyrd*), or general levy, at the king's summons. *Fyrd-fare* was one of the three liabilities of all owners of land in England (*b*). Those guilty of neglecting it were subjected to a very heavy penalty called *fyrd-wite*, which might extend even to the forfeiture of the whole of their land. The levy of each shire took the field, down to the Norman conquest, under its alderman or military chief of the shire, and after the Conquest, under the sheriff (*c*).

Double aspect of this service.

4. This general levy of all able-bodied (*d*) men in each county had a double aspect. As a civil force it was known as the *posse comitatus*, which the sheriff was entitled to call on to arrest criminals and suppress riots; and the obligation to serve in it was closely connected with the obligation attaching to every man of keeping watch and ward, and of following the hue and cry, which was directed against criminals (*e*). In its other aspect it was

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(*a*) See Clode's Military Forces of the Crown (Murray, 1869) which contains many original authorities, chiefly for the period subsequent to 1660. For the earlier period many extracts from and references to original authorities are contained in Grose's Military Antiquities, and in Scott's British Army. The powers of the Crown for the defence of the realm are enumerated and discussed in the Ship Money Case (see especially St. John's argument), Howell's State Trials, iii. 825, summarised in Clode, Mil. Forces, i. 354, 355. The constitution of the general levy and the feudal army, and the incidence of feudal tenure, are described in the ordinary histories, such as Hallam's Middle Ages, and Constitutional History; Lingard's History; Taswell Langmead's Constitutional History (1st edn.); and especially Stubbs' Constitutional History (popular edn.) and also in legal books, such as Coke on Littleton, and Blackstone's Commentaries. The chapters in Social England on military matters and Professor Oman's History of the Art of War may also be consulted.

(*b*) Afterwards called the *trinoda necessitas*, the other two liabilities being to maintain fortifications and to repair bridges. In some cases the age mentioned is 16 (Stubbs, Const. Hist. i. 102 &c.).

(*c*) See Stubbs, Const. Hist. i. 209, 469.

(*d*) Stubbs, Select Charters, 370-3; Stubbs, Const. Hist., i. 209, 633, ii. 220; Grose, Mil. Antiq., i. 9; 13 Edw. I (Stat. Winton), st. 2, c. 6; 3 & 4 Edw. VI, c. 5; 1 Mar. sess. 2, c. 12; 1 Eliz. c. 16.

(*e*) It was known as the *ban* or *fyrd* or expedition, Stubbs, Const. Hist., i. 81, 209, 494, 633. See Commissions in Rymer's Fœdera.

a military force, and was called out, under the sheriff or some other officer of the Crown, to defend the realm in civil war or against foreign foes. The force was liable to serve only in the kingdom, and, except in case of invasion, only in its own county. Sometimes it was called out in all the counties ; at other times, in particular counties only, as, for instance, in the northern counties, to resist the Scots, or in the midland counties, to resist the Welsh. The general levy was repeatedly called out by the Norman and Angevin kings (1066 to 1204) for the suppression of internal rebellion or of border warfare against the Welsh and Scots. It was unsuitable for warfare beyond the seas (*a*). But it apparently served as a mode of obtaining troops down, at any rate, to the fourteenth century (*b*).

Organization of general levy.

5. The general levy was organised by divers ordinances and statutes, which determined the arms and, in the case of the more wealthy, the horses which each man was to provide, in accordance with the amount of his land and goods. The sheriffs, mayors, and justices, as well as the constables annually appointed for the purpose in each hundred, were to enforce the obligation to serve and provide arms, and twice every year were to inquire into the arms provided, or, as it was termed, to hold "views of armour." Writs were often addressed by the King to the sheriffs and others to array or summon before them the men liable to service (whom from being sworn to keep arms were called *jurati ad arma*), and to punish defaulters ; and the writ often directed such arrayers, or other persons named in it, to lead the force on active service (*c*).

Lieutenants in counties.

6. In the time of Edward the Sixth, we find lieutenants appointed in the counties to array, or lead, or both ; and after the reign of Mary, such lieutenants, now commonly known as Lords Lieutenant, were usually appointed for those purposes (*d*).

Right of purveyance.

7. Closely connected with the general levy was the Crown's prerogative of purveyance, which enabled the Crown to enforce the supply of carriages, carpenters, smiths, and other artificers, as well as of victuals, for military purposes (*e*).

Thegns.

8. Even before the Norman conquest the general levy took long to raise and was difficult to keep together, especially when operating outside the boundary of its own petty kingdom. For a more trustworthy, better-armed, and more permanent force, the old English kings relied on their military dependents, to whom

(*a*) It was summoned by William II to Hastings in 1094 to cross for a campaign in France, but was dismissed.

(*b*) See Statutes, 1 Ed. 3, cc. 7, 15 ; 18 Ed. 3, st. 2, c. 7.

(*c*) Hen. II, Assize of Arms ; Stubbs, Select Charters, 153, and the statutes 13 Edw. I (Stat. Winton), c. 6 ; 34 Edw. I, st. 2 in common editions ; 2 Edw. III, c. 6 ; 5 Hen. IV, c. 3 ; 3 Hen. VIII, c. 3 ; 33 Hen. VIII, cc. 5, 9 ; 4 & 5 Phil. and Mary, c. 2. See also Acts referred to in the next note. See further, Grose, Mil. Antiq., i. 2, 9, 74-96 ; Clode, Mil. Forces, i. 16, 345-57 ; Stubbs, Select Charters, 281, 343, 370-3 ; Stubbs, Const. Hist., i. 526-7, 632, 634, ii. 293 ; Writs in Rymer's Fœdera and Palgrave's Parliamentary Writs.

(*d*) See Acts 3 & 4 Edw. VI, c. 5, s. 13, 1 Mar. sess. 2, c. 12, s. 12 ; 4 & 5 Phil. and Mar. c. 3, 1 Eliz. c. 16. Clode, Mil. Forces, i. 32 ; Scott, British Army, i. 329, 348 ; Grose, Mil. Antiq., i. 79. Strype (Ecclesiastical Memorials ii. 278), says that lieutenants were first appointed in 3 Edw. VI (1549), and were appointed annually. They are spoken of by Camden (Britannia, i. clxvii, clxxxix), as appointed in troublesome times, and by Holinshed (Chronicles i. 155), as appointed in time of necessity. They were also appointed for several counties. An abstract of the authority given to a lieutenant by his commission is to be found in Lodge's Illustrations of British History, ii. 325 ; see also 419 to 426 ; see also Scott, Brit. Army, i, 348. After 1660, they became statutory officers appointed for the militia, see below, para. 84.

(*e*) Stubbs, Select Charters, p. 359, and divers writs in Rymer's Fœdera ; Stubbs, Const. Hist., ii. 564 ; Clode, Mil. Forces, i. 347. Grose, Mil. Antiq., i. 86. The Crown's right of purveyance was restrained by many Acts, and ultimately abolished by 12 Cha. II. c. 24.

Ch. IX.

they had granted land on the condition of military service. These warriors were originally known as *Gesiths*, but from the ninth century onward that name is superseded by *thegn.* Alfred and his successors, under the stress of their Danish wars, incorporated in the thegnhood all the men of substance in the realm, whatever their origin, wealthy yeomen and merchants no less than members of ancient noble families (*a*).

Feudal levy.

9. The Norman conquest in 1066 changed the condition of the upper ranks of the military force by substituting a wholly feudalized military aristocracy for the semifeudal thegnhood. The whole of England was carved out by William I into a number of military fiefs held from the Crown. Some were small, but many were very large—earldoms and baronies—the holders of which cut up their vast domains into smaller military fiefs or knights-fees dependent upon themselves. The holder of a military fief might therefore be either a tenant in chief holding directly from the Crown, or a sub-tenant holding under some great earl or baron. All alike were bound to attend the king at their own expense on horseback and in armour with their retainers, who might be either mounted or on foot (*b*). After 1289 (*c*) grants of land could only bind the holder to render service to the king or other superior lord, and not to the grantor of the land, and consequently the number of the retainers of the inferior lords gradually diminished. Some of the great earls and barons had an establishment of domestic knights not holding lands and entirely dependent on them.

The period of feudal service was limited by custom to forty days in each year, a term too short for foreign expeditions, and consequently the forces so raised were often induced by high pay to continue to serve as mercenaries (see below, para. 24). Though the earlier kings successfully demanded service abroad as well as service at home, the obligation to serve abroad was challenged at an early date (1198), and as time passed the feudal tenants displayed increasing reluctance to serve out of the kingdom and at length refused to do so (*d*). The knights who on horseback and in a coat of mail formed the most prominent feature of warfare in the Middle Ages served under the feudal levy. The infantry were either the retainers of those knights, or raised from the general levy, or by contract (see below, para. 24). The lancers and archers, however raised, were taken chiefly from the middle classes and highly paid (*e*).

Composition in lieu of personal service.

10. Personal service formed the basis alike of the feudal and of the general levy, but the obligation to serve in the general levy rested on every man as a citizen, or as it was termed "on every "man within the allegiance of the king." The feudal levy was dependent on homage or on tenure under some feudal lord, whether the king or some great earl or baron. Obviously there must always have been many feudal tenants unable to render personal service,

(*a*) Stubbs, Const. Hist., i, 172, 210.

(*b*) Grose, Mil. Antiq., i. 8, 120; Scott. Brit. Army, i. 119, 138.

(*c*) By the statute known as "Quia Emptores" (18 Edw. I, c. 1), which, while authorising the sale of lands, provided that the purchaser of land (called in the Act the feoffee) should hold it of the chief or superior lord and not of the vendor (called in the Act the feoffor), and should render to the chief or superior lord the same services which the vendor rendered before the sale.

(*d*) Stubbs, Const. Hist. i. pp. 284 ff; ii. pp. 293. The feudal levy appears to have been frequently summoned for service beyond the seas down to 1300, but fell into disuse before 1400. In 1198, Bishops Hugh, of Lincoln, and Herbert, of Salisbury, and in 1213 the northern barons, refused foreign service as not obligatory under their tenure, and it was opposed more seriously by the Earls of Norfolk and Hereford in 1296, 1297.

(*e*) Hallam, Const. Hist., ii. 129; Stubbs, Const. Hist., ii. 297.

and the calling out under the general levy of the whole population capable of bearing arms can but very rarely have been desirable or possible (*a*). Service by deputy, or payment in lieu of personal service, and the calling out of a quota only, were accordingly allowed from very early times (*b*).

In case of feudal levy.

11. In the case of the feudal levy, we must first notice the clergy, who held their lands by the tenure known as *Frankalmoign*, and who, as a rule, performed their military service by deputy or paid a composition (*c*), though cases of military prelates are well known in history. Women also, and infants, and other feudal tenants who were unable to render personal service, either found substitutes or paid a composition (*d*); and the payment of a composition in lieu of service was at an early date (*e*) extended from those who were unable to those who were unwilling to serve in person.

Scutage Escuage.

12. Henry I appears to have been the first to require a number of knights, instead of serving in person for forty days, to equip and maintain a knight in service for a longer period: and Henry II began (about 1156) to levy a money composition for personal service, under the name of Scutage or Escuage (*f*). This composition was probably levied at first only by agreement between the king and his subjects; but it subsequently became an abuse and gave rise to remonstrances as a tax levied by royal authority only; and from 1215 until the end of the reign of Edward II (1327) it was levied only under assessment by Parliament (*g*). With the decay of feudalism the tax fell into disuse (*h*); and it was ultimately, together with tenure by knight service, abolished during the Commonwealth, and finally extinguished on the Restoration in 1660 (*i*).

In case of general levy, quota and contributions to expenses.

13. Similarly, in the case of the general levy, the practice arose of calling on a certain quota only from each county to serve in person, and of requiring those not so called on to supply with arms and victuals, and to defray the expenses of those who served in person (*j*). This developed into a sort of tax on the county or township, not under the authority of Parliament, and continued until very recently, in the form of a liability on the part of the county to pay a part of the expenses of the militia (*k*).

Mode of calling out feudal levy.

14. Both the feudal and the general levy when summoned for war, were summoned by writ from the Crown.

These writs did not always distinguish between those liable to serve under the feudal levy and those liable under the general

(*a*) Stubbs, Const. Hist., ii. 290.

(*b*) As early as Henry II.

(*c*) Grose, Mil. Antiq., i. 5; Scott, i. 138, 248. See, however, writs requiring personal service in Rymer's Fœdera; one is printed by Grose, Mil. Antiq., i. 5.

(*d*) Grose, Mil. Antiq., i. 6, 7.

(*e*) As early as Henry I.

(*f*) Stubbs, Select Charters, 281, 343, 364; Const. Hist., i. 623, 626, 632; ii. 291; Grose, Mil. Antiq., i. 7, 8; Scott, Brit. Army, i. 119, 138, 245. Escuage is in Latin Scutagium, from *scutum*, a name given to a fief held on military service.

(*g*) *I.e.*, "the common council of the realm." The Great Charter granted by John in 1215 required this; the omission of the requirement from later charters did not at first alter the practice. Stubbs, Const. Hist., i. 573; Grose, Mil. Antiq., i. 7; Coke, Inst., i. 72 b, 74 b, note 37; Stubbs, Select Charters, 293, 343, 364.

(*h*) Coke, Inst., i. 74 b, note 37.

(*i*) By Act 12 Cha. II, c. 24, together with other feudal incidents. Excise duties on beer were granted to the Crown as an equivalent.

(*j*) Stubbs, Const. Hist., ii. 297. Stubbs, Select Charters, 359. During the great French wars, 1338 to 1453, the main part of the armies led by Edward III and his successors were mercenaries (see below, paragraphs 24, 25). But some of them were still raised under commissions of array (see 1 Ed. 3, cc. 7, 15; 18 Ed. 3, c. 7).

(*k*) Part of this was "coat and conduct money," said to have begun in the reign of Queen Elizabeth, with a promise of repayment by the Crown, and formed a subject of dispute between Charles I and the Parliament; Scott, Brit. Army, i. 448; Clode, Mil. Forces, i. 21; Cobbett, Parliamentary History, ii. 549, 562, 642, 651, 655.

Ch. IX.

levy, and those who served under the claim of purveyance (*a*); though strictly in the case of the feudal levy, a special summons ought to be issued to each baron, bishop, and abbot, and served by the sheriff, while those of lower rank were summoned by a general proclamation of the sheriff made in obedience to the royal writ (*b*). The writs followed the latter practice as to the quota, and directed the commissioners under them to "elect" a number of men, that is, virtually to press them to join the army for general service. These writs in the reign of Edward I became known as "commissions of array" (*c*).

Questions as to legality of Commissions for purpose of foreign service.

15. So far as these commissions were to raise a force for the defence of the realm against invasion, they were perfectly legal; but even if they were always legal in form, they were used, not merely for the legal purpose of raising troops to resist invasion, or to invade Scotland (which might be treated as resisting invasion), but also for the purpose of raising troops for foreign service. They threw on the counties the burden of finding soldiers for and paying the expenses of foreign wars, and thus indirectly taxed them without consent of Parliament, a practice which—after the rise of Parliament at any rate—was unconstitutional.

Resistance of Parliament.

16. This grievance was accordingly resisted by Parliament; and by a series of Acts beginning in 1327, it was provided that men should not be required to serve out of their counties except in the case of invasion; that men-at-arms, hoblers, and archers chosen to serve out of England should be paid by the Crown after leaving their counties; and that no man should be constrained to find men-at-arms, hoblers, or archers, unless bound by feudal service, or under the authority of Parliament (*d*).

Impressment during Wars of the Roses and in time of Tudors.

17. During the Wars of the Roses and the reigns of the Tudors troops were raised in the most irregular manner. The greater part of the real fighting was done by volunteers hired on private account by rival barons, and by retainers gathered under the custom of "livery and maintenance," under which great men gave their badge and livery to their smaller neighbours, and undertook to champion their quarrels, the receiver, on the other hand, agreeing to come out in arms to aid his protector whenever the latter took the field. During these wars constitutional rights were ignored and forgotten, and not only were commissions of array continued, but the practice of impressing soldiers under them became so common, that impressment was assumed to be the right of the Crown (*e*); while certain Acts in the time of Henry VIII and of Philip and Mary increased and enforced the liability to provide horses and arms in proportion to property (*f*), and to practise

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(*a*) This confusion began as early as Henry III.

(*b*) Grose, Mil. Antiq., i. 65; Stubbs, Const. Hist., ii. 296; Stubbs, Select Charters, 281.

(*c*) Stubbs, Const. Hist., ii. 297. Hallam, Const. Hist., ii. 133, states the earliest commission of array as of 1324 and the last of 1527. But see Stubbs, Select Charters, 359, and Const. Hist., ii. 297, and the commissions of musters of Elizabeth's reign, Grose, Mil. Antiq., i. 79.

(*d*) Stubbs, Select Charters, 359; Const. Hist., ii. 297, 417, 421, 568; iii. 285–7; Lingard, iv. ch. 2; Acts 1 Edw. III, st. 2, cc. 5, 7, 15; 18 Edw. III, st. 2, c. 7; 25 Edw. III, st. 5, c. 8; 4 Hen. IV, c. 13. The form of commissions of array was settled in Parliament in 5 Hen. IV, A.D. 1404. Stubbs, Const. Hist., iii. 281. "Hobler" was a light cavalry soldier; Grose, Mil. Antiq., i, 106; Scott, Brit. Army, ii. 22, 329. For cases of armies raised at the charge of counties, see Sir R. Cotton's paper, printed in Grose, Mil. Antiq., i. 74, and the Ship Money Case in Howell's State Trials, iii. 825.

(*e*) Stubbs, Const. Hist., iii. 285; Rymer's Fœdera; Hallam, Const. Hist., ii. 130. See 1 Edw. III, st. 2, c. 15.

(*f*) 33 Hen. VIII, cc. 5, 9; 4 & 5 Phil. and Mar. c. 2. The last Act repealed the old Act, except 33 Hen. VII, c. 9, as to providing arms. It also required cities and towns to provide arms at the common charge. Compare Stubbs, Select Charters, 154.

archery (*a*), and another Act of Philip and Mary imposed a penalty for not attending musters of commissioners authorised to muster men and levy the ablest for the wars (*b*); and we learn from the Acts in Elizabeth's reign (*c*) as well as from Shakspeare (*d*), that impressment was then commonly considered to be one of the prerogatives of the Crown (*e*).

Repeal of Armour Acts in reign of Jas. I.

18. In 1604, the first Parliament of James I repealed the above-mentioned Acts of Henry VIII and of Philip and Mary (*f*) as regards the provision of armour and horses: and as that repeal was held to revive the older Acts respecting the provision of armour, those Acts were finally repealed in 1624, the last year of the reign of James I (*g*).

Commissions of musters, and trained bands.

19. The liability to serve in the general levy, however, still continued, and was still enforced by means of commissions of array, which gradually developed into a rather different form under the title of Commissions of Musters (*h*). These commissions directed the commissioners to register and muster all persons liable to provide horses, arms, or soldiers, and to select a convenient number of such persons to serve in person at the charge of their counties for the service and defence of the Crown, who were to be sorted into bands, and trained and exercised at the charge of the different parishes in the county. These commissions and this description of training appeared to have assumed at the end of the sixteenth and the beginning of the seventeenth century a quasi-permanent form under lieutenants of counties or other commissioners, and the bands trained under them became known as Trained or Train Bands, and were mustered annually. At the same time there existed, side by side with the trained bands, and in more or less connection with them, voluntary bodies, such as the Honourable Artillery Company in London, and similar bodies elsewhere, which doubtless owed their origin to the fact of its being fashionable to possess military acquirements (*i*).

(*a*) 3 Hen. VIII, c. 3; 33 Hen. VIII, c. 9, containing an order to practise archery, with a prohibition of unlawful games, as bowles, tennis, coitinge, &c.

(*b*) 4 & 5 Phil. and Mar., c. 3. This assumed the right to muster and impress.

(*c*) 5 Eliz. c. 5, s. 24; 35 Eliz. c. 4; 43 Eliz. cc. 3, 9.

(*d*) Shakspeare, Hen. IV, Part I, Act 4, sc. 2, Falstaff says: "I have misused the king's press damnably; I have got in exchange of 150 soldiers 300 and odd pounds. I press me none but good householders, yeomen's sons; inquire me out contracted bachelors, such as had been asked twice on the banns; such a commodity of warm slaves as had as lief hear the devil as a drum; such as fear the report of a culverin worse than a struck deer, or a hurt wild fowl * * * and they have bought out their services; and now my whole charge consists of * * * such as indeed were never soldiers, but discarded unjust serving men, younger sons to younger brothers, revolted tapsters, and ostlers trade-fallen; the cankers of a calm world and long peace; ten times more dishonourably ragged than an old-faced ancient; and such have I to fill up the rooms of them that have bought out their services, that you would think I had 150 tattered prodigals lately come from swine-keeping. * * * Nay, and the villains march wide betwixt the legs, as if they had gyves on; for indeed, I had the most of them out of prison."

(*e*) Hallam, Const. Hist., ii. 130, 131; Clode, Mil. Forces, i. 17; Grose, Mil. Antiq., i. 97; Rushworth, Historical Collections, i. 152.

(*f*) 33 Hen. VIII, c. 5; 4 & 5 Phil. and Mar. c. 2, repealed by 1 James I, c. 25, s. 7. See Hallam, Const. Hist., ii. 133.

(*g*) By 21 Jas. I, c. 28; See Scott, Brit. Army, i. 394.

(*h*) These musters are distinct from the musters of troops in pay.

(*i*) Grose, Mil. Antiq., i. 79; ii. 324. Raikes, in his Hist. of Hon. Artill. Compy., i. 28–143, mentions the organisation of the trained bands in 1605, and that they were used to suppress riots. Provisions were made for storing and repairing the arms; Rymer, A.D. 1612; Cobbett, Parl. Hist., ii. 782, 783, 850, 934; Clode, Mil. Forces, i. 29. Camden speaks of the commission to the lieutenant as a permanent commission of array; the former seems practically to have superseded the other. See also the commissions given to lieutenants, Lodge's Illustrations of Brit. Hist., ii. 325. The commission there mentioned gives the lieutenant powers similar to those of the commission of musters and also power to use martial law, and to make a provost-marshal. See also Scott, Brit. Army, i. 326–8, 379, 394, 402–407. An abstract of the commission issued before the Spanish Armada is printed in Scott, Brit. Army, i. 345.

Ch. IX.

Commissions of musters, a grievance under Charles I.

20. During the reign of Charles I, the commissions of musters were used for the purpose of exacting contributions in money and arms from the counties, and so taxing them without the consent of Parliament. These exactions were felt to be grievances, and complained of in Parliament, and, together with commissions for trying persons by martial law in time of peace and the practice of billeting, were, in 1628, declared to be illegal by the Petition of Right (*a*). The exactions nevertheless continued, and, together with the impressment of soldiers and the powers of the lieutenants of counties, formed the subject of further complaints in the Parliament of 1640 (*b*).

Impressment declared illegal by Long Parliament.

21. In the Long Parliament in the same year, Charles I, though at first claiming the power of impressment as the ancient and undoubted prerogative of the Crown, assented to an Act declaring impressment illegal (*c*). This Act, after reciting rebellions in Ireland, which would endanger not only that kingdom, but also the kingdom of England, unless "a course be taken for the preventing thereof, and for the raising and pressing of men for those services," and also reciting that by the laws of the realm none of His Majesty's subjects ought to be impressed or compelled to serve out of his country, except in case of necessity or invasion, or except they be otherwise bound by the tenure of their lands, gave statutory authority to impress soldiers for service in Ireland.

Trained bands or militia under Charles I.

22. The Parliaments of Charles I, while protesting against the exactions enforced by the lieutenants of counties and the illegality of impressment, did not complain of the mustering of the trained bands; and the value of the trained bands, or militia as they now began to be called, and the necessity for exercising them, and providing them with arms and ammunition, were recognised on many occasions by the Long Parliament (*d*). Parliament, however, was extremely unwilling to leave the command of the militia under the control of the Crown exercised through the lieutenants of counties, and this question was one of the principal matters in dispute at the time of the rupture between Charles I and his Parliament (*e*).

Troops raised irregularly during Civil War.

23. The mode in which troops were raised during the Civil War and the Commonwealth was necessarily irregular, and need not be noticed here.

Other classes of soldiers.

24. Before passing to the second period after the Restoration in 1660 a short mention must be made of three other classes of soldiers raised in the earlier period, and of the mode of enforcing the service of soldiers :—

Crown grantees.

(i.) Holders of offices, pensions, lordships, or lands from the Crown were, at the end of the fifteenth century, made liable to serve at home or abroad, on pain of forfeiture (*f*).

Criminals and debtors.

(ii.) Sometimes also criminals were pardoned, or debtors released, on condition of serving as soldiers (*g*).

See also Commissions in Rymer. The modern commission to a lord lieutenant (Clode, Mil. Forces, i. 586), is expressed to be issued in pursuance of the Militia Acts.

(*a*) 3 Cha. I, c. 1. See extract from Petition of Right below, p. 613.

(*b*) As to complaints in Parliament, in addition to the complaints as to ship money, Cobbett, Parl. Hist., ii. 233–5, 549, 561, 642, 652–5.

(*c*) 16 Cha. I, c. 28. As to previous proceedings in Parliament, see Cobbett, Parl. Hist., ii. 968, 977–981, 1087.

(*d*) Cobbett, Parl. Hist., ii. 655. See also 782–783, 849, 934.

(*e*) Cobbett, Parl. Hist., ii. 1069, 1243. Hallam, Const. Hist., ii. 133–6. Gardiner, Hist. of Eng., x. 95–110, 186–193.

(*f*) By 11 Hen. VII, c. 18; 19 Hen. VII, c. 1; Clode, Mil. Forces, i. 337, 350.

(*g*) Grose, Mil. Antiq., i. 73; Scott, Brit. Army, i. 282.

(iii.) The third and most important class was that of men who received pay for their services, who were termed "mercenaries," or "stipendiaries," terms which, though originally like the term "soldiers" (*a*), meaning those who were paid for their services, came at an early period to mean those who adopted arms as a profession, and served solely for pay. The convenience of employing mercenaries is obvious, having regard to the limitations on the service of the general levy and of the feudal levy mentioned above; and from the date of the Conquest in 1066 mercenaries formed part of the forces of the Crown. The distinction, however, between these troops and those raised under the feudal or general levy was not always a wide one, as men raised under those levies were often induced by liberal payment to serve beyond the seas, or for more than 40 days, and doubtless often fell into the class of mercenaries. Mercenaries.

25. Mercenaries were usually raised by an indenture or contract between the king and some person of high position, who was able by his influence or wealth to obtain soldiers. The men so raised were at first chiefly foreigners; and as their employment in England was not only strongly objected to, but was rendered less necessary by the liability of the inhabitants of the realm to service at home, they were almost entirely employed on foreign service. After the raising of men compulsorily under commissions of array was, as before mentioned, restrained by Parliament in the reign of Edward III, the practice of raising troops by indentures became more common; in fact, after the beginning of the reign of Henry V, the larger part of the forces of the Crown were so raised (*b*). Raising of mercenaries, by indentures or contracts.

26. At first the soldiers so raised were enlisted to serve the officer who raised them, but after 1491 (7 Henry VII), if not before, they were enlisted to serve the king (*c*), and as early as the time of Charles I, enlistment was carried on under beating orders issued by the Crown (*d*). The mode of raising troops by contract with an individual, sometimes for a sum of money, sometimes on condition of the contractor having the appointment of the officers of the force raised continued (*e*), notwithstanding the change of enlistment from a contract to serve the officer to a contract to serve the Crown, and notwithstanding that the establishment of a standing army altered the practice of enlisting for a particular war to that of enlisting for continuous service. Enlistment, however, was strictly regimental, that is, for service in the particular regiment with which the recruiting officer was connected. Enlistment to serve the Crown.

27. The obligation to serve (except in the case of a breach of that obligation by desertion in the field) was not enforced in military courts, but by civil penalties; in the case of the general levy by Enforcement of obligation to serve.

(*a*) Soldier being derived from "solidus" "solde" or pay; "soldato" in Italian meaning a hired man. For *conductitii*, or hired men, mentioned also in Ducange (the *condottieri* of Italy), there seems to be no English equivalent.

(*b*) Grose, Mil. Antiq., i. 57–77; Hallam, Const. Hist., ii. 130; Stubbs, Const. Hist., iii. 557; Magna Carta of King John, Art. 41; Stubbs, Select Charters, 294. In Rymer's Fœdera, there are contracts between Hen. I and Earl of Flanders, for supplying troops. See also Rymer, A.D. 1284, 1295; Grose, Mil. Antiq., i. 188; Scott, Brit. Army, i. 264, 279.

(*c*) See preamble to 18 Hen. VI, cc. 18, 19; 7 Hen. VII, c. 1; 3 Hen. VIII, c. 5, and remarks on these Acts in "*The Case of Soldiers*," Coke's Reports, Part VI, 27*a*.

(*d*) So called from the expression at the beginning of the order, "to raise troops by beat of drum," which was derived from the actual use of the drum. See Clode, Mil. Forces, ii. 580–584.

(*e*) Clode, Mil. Forces, ii. 6, 581.

Ch. IX.

fine, seizure of property, and imprisonment, and in the case of the feudal levy by fine and forfeiture of the fief held on condition of rendering military service (*a*). Indeed, the Crown derived an income from distraining owners of fiefs to assume knighthood (*b*). Moreover, the high-handed proceedings of fine and imprisonment which we find, even after the reign of Queen Elizabeth, exercised in other cases, were doubtless exercised for the purpose of compelling persons to serve.

In case of mercenaries.

28. In the case of mercenaries, these powers were insufficient and, therefore, a soldier deserting from the captain with whom he contracted to serve, and who was under an indenture with the Crown to provide a certain number of soldiers, was in 1439 declared by Parliament to be punishable as a felon, that is, in a civil court (*c*), and at a later date this enactment was extended to soldiers who had contracted to serve the Crown (*d*).

Punishment of desertion after Revolution.

29. The punishment of desertion in a civil court became practically unnecessary after the Revolution, when the Mutiny Acts passed annually by Parliament provided a more speedy punishment by means of a military court (*e*).

Second Period—Standing Army.

Changes in military system on the Restoration in 1660.

30. At the Restoration in 1660, considerable changes took place in the military system of the country. Knight service, with the feudal levy and its incidents, including escuage, was finally abolished (*f*); the organisation of the general levy, of which the trained bands formed part, into the militia was completed under the authority of Parliament, and at the same time the king laid the foundation of the present standing army.

No standing army before Restoration.

31. Before the Restoration there had been no standing army. Armies for particular wars had indeed been raised and paid for by Parliament, but were not kept on foot as standing armies after the conclusion of the wars for which they were raised, mainly, perhaps, on account of the cost (*g*). A few troops were also maintained in certain garrisons, and small corps of serjeants-at-arms (*h*), yeomen of the guard (*i*), and gentlemen pensioners (*j*) existed; but these

(*a*) See Acts quoted above in note (*f*), p. 152; and writ to arrayers of 17th June, 1327, in Rymer's Fœdera, directing the arrayers to punish the disobedient by arrest and seizure into the King's hands of their lands, tenements, goods, and chattels; Lingard, iv. ch. ii.

(*b*) Grose, Mil. Antiq., i. 3, 8; Stubbs, Const. Hist., ii. 294; Hallam, Middle Ages, i. 170; Scott, Brit. Army, i. 119, 122, 245; Cobbett, Parl. Hist., ii. 549, 642.

(*c*) 18 Hen. VI, c. 19. Every felony at that time involved capital punishment and forfeiture of personal property.

(*d*) 7 Hen. VII, c. 1; 3 Hen. VIII, c. 5; see also 2 & 3 Edw. VI, c. 2, revived by 4 & 5 Phil. and Mar., c. 3, s. 8. The Acts also provided for the punishment of certain frauds, as regards pay, &c.

(*e*) The above mentioned Acts, 7 Hen. VII, c. 1; and 3 Hen. VIII, c. 5, were determined to be in force by the *Case of Soldiers*, Coke's Rep., Part vi. 27*a*, and were put in execution by James II, *Rex.* v. *Dale*, 2 Shower's Rep., 511; Howell's State Trials, xii. 262, note 7, but being in practice rendered useless by the Annual Mutiny Acts, were repealed as obsolete by the Statute Law Revision Act, 1863. Grose, Mil. Antiq., i. 65, writing before that repeal, observes that if the Mutiny Act were at any time to expire, the soldier would be punishable for desertion in a civil court under the above-mentioned Acts. See also Hale, Pleas of the Crown, i. 670–80; Blackstone's Commentaries, iv. 102; Clode, Mil. Forces, i. 350. Macaulay, in his History (iii. 43), says that the Acts put in force by James II were obsolete, and that the construction put upon them by the judges was considered by respectable jurists as unsound. It appears, however, from the report of the case that the illegality, if any, was in regard to the place of execution of the soldier convicted, and not in the fact of his prosecution.

(*f*) By 12 Cha. II, c. 24.

(*g*) Grose, Mil. Antiq., i. 61; Scott, Brit. Army, i. 328.

(*h*) Now a purely civil body; Grose, Mil. Antiq., i. 61, 173–175.

(*i*) Established by Hen. VII in 1485; Hallam, Const. Hist., ii. 131; Grose, Mil. Antiq., i. 61, 175–177.

(*j*) Established in 1509 by Hen. VIII; Grose, Mil. Antiq., i. 61, 113–120.

corps were kept up rather as personal attendants on the King than for operations in the field (*a*). The only other corps of a permanent character were the trained bands, and the Honourable Artillery Company of London, and similar associations, which were in effect either part of the general levy, or voluntary associations, and not in the nature of a standing army (*b*).

Maintenance of standing army after Restoration.

32. The army raised by the Parliament during the Civil War was disbanded under Acts of Parliament (*c*) passed on the Restoration in 1660, but under a section in those Acts Charles II was enabled to keep up not only the garrisons in certain fortified places, but also one or two of the regiments which had aided in his restoration (*d*). Moreover, he subsequently raised several other regiments by voluntary enlistment, and paid them out of the liberal grants made to him for life by Parliament. These regiments were maintained during his reign and that of his successor, James II, and their numbers were gradually increased, not merely on the occurrence or in anticipation of foreign war, but on other occasions (*e*).

Maintenance of standing army in time of peace, without consent of Parliament, declared illegal by Bill of Rights.

33. The maintenance of these troops, however, formed the subject of frequent remonstrances in Parliament (*f*), and the increase of their numbers by James II was one of the causes which led to the Revolution of 1688. At that time, while the opponents of the Court party during the previous reigns had just escaped from the evils and the dangers of a standing army, the Court party had not forgotten how keenly they had felt them during the Commonwealth. Both parties therefore joined in procuring the declaration in the Bill of Rights (*g*), "that the raising or keeping a standing army within "the Kingdom in time of peace unless it be with the consent of "Parliament is against law"; a declaration annually repeated, up to 1878 in the preamble to the Mutiny Act, and since then in the preamble to the Annual Act bringing the Army Act into force.

Control of Parliament since the Bill of Rights.

34. Notwithstanding the insular position of England, the course of events since 1689 (*h*) has at times been such as to make the nation acquiesce in the necessity for keeping up a standing army, and such a force has accordingly been maintained without intermission since the passing of the Bill of Rights. But the raising, government, and payment of the army have always been expressly sanctioned by Parliament, and only for a period of twelve months at a time, so that it is a statutory, and not a prerogative force, and the Crown is under the necessity of asking annually for the consent of Parliament to its maintenance.

(*a*) Grose, Mil. Antiq., i. 61.

(*b*) Hallam, Const. Hist., ii. 131–133.

(*c*) 12 Cha. II, cc. 9, 10, 15, 20, 27, 28.

(*d*) For instance, General Monk's regiment raised at Coldstream, afterwards the Coldstream Guards, which, together with other regiments, was disbanded and reformed on the same day. Grose, Mil. Antiq., i. 61, 98; Mackinnon's Hist. of Coldstream Guards. The territorial titles of other regiments, as 10th North Lincoln, 15th York, East Riding, arose similarly, no doubt, from the districts in which they were first raised.

(*e*) As, for instance, when the garrison of Tangier was brought to England on the abandonment of that settlement. Grose, Mil. Antiq., i. 61, 98; Macaulay, Hist. of England, i. 293, 294. See also Clode, Mil. Forces, i. ch. iv.

(*f*) Taswell Langmead, Const. Hist., 497, 609; Clode, Mil. Forces, i. ch. iv.; 31 Cha. II, c. 1.

(*g*) 1 Will. & Mar., sess. 2, c. 2 (1689). It will be observed that this Act is a declaration of old law, not an enactment of new.

(*h*) First, the engagement of England in the continental league against Louis XIV, accompanied by the victories of Marlborough; then the dangers from the Scotch and other Jacobites; then the War of the Austrian Succession; the Seven Years War; the American War; the French Revolution; and the Peninsular War. Until the latter, the numbers were very small. see table, Clode, Mil. Forces, 398; Hallam, Const. Hist., iii. 256–258; Taswell Langmead, Const. Hist., 608.

Ch. IX.

As respects number of troops.

35. The number of troops to be maintained is and has since 1712 been mentioned in the preamble to the annual Act which sanctions the army (*a*), and any unauthorised augmentation of such number has been always resisted by Parliament (*b*); indeed Parliamentary authority has been invoked to enable the Crown to accept the services of Volunteers (*c*). Any excess of forces above the number named in the preamble to the annual Act did not, however, and will not affect the application to those forces of the Act enacting military law (*d*), though it would form a ground for censure or impeachment of the Minister who authorised the excess. The provision of the Bill of Rights prevents the introduction of foreign troops into the kingdom without the consent of Parliament (*e*).

Raising, Government, and Payment of Army since 1660.

Raising, &c., of army since 1660.

36. A short statement will now be given of the manner in which the army has been raised, governed, and paid from the time of the Restoration until the present day.

Compulsory service replaced by system of bounties.

37. The final abolition of impressment in 1640 has been already mentioned, and since the Restoration in 1660 compulsory service in the army in the usual sense of the term has been unknown in this country; but at different times Acts have been passed authorising the impressment of certain persons of blemished character, or unsettled mode of life (*f*). Still for the greater part of the period enlistment has been entirely voluntary, recruits having been induced to enlist by means of sums called bounties, paid to them on their enlistment, which in time of war rose to a considerable amount (*g*).

Competition for recruits between army and militia in 18th century.

38. During the wars of the greater part of the eighteenth century recruits were wanted for the militia as well as for the army, so that difficulties constantly arose in consequence of competition between the officers recruiting for the two forces. These difficulties were intensified by the use of the ballot for the purpose of raising the militia, inasmuch as parishes, in order to avoid the ballot by obtaining volunteers, and persons drawn in the ballot for service, in order to obtain substitutes, paid high prices to the very men who

(*a*) Formerly the Annual Mutiny Act, and now the Army (Annual) Act. The first Act in which the numbers were mentioned was 12 Ann. c. 13, which regulated the number and discipline of the forces continued on foot after the conclusion of the peace of Utrecht.

(*b*) Clode, Mil. Forces, i. 85–89.

(*c*) See below, para. 110, *et seq.* See also s. 3 of the Reserve Forces and Militia Act, 1898, below, p. 653.

(*d*) This has recently been provided for by express enactment. See Mutiny Act, 1869, s. 59, and Army (Annual) Act. The number of the Marines was not mentioned in the preamble to the Marine Mutiny Act, and is not mentioned in the Army (Annual) Act, possibly because they partly belong to the navy, whose numbers are not limited; see the text of the Army (Annual) Act, below, p. 257.

(*e*) Clode, Mil. Forces, i. 89.

(*f*) Provisions for the release from custody of criminals pardoned on condition of enlisting were contained in the Mutiny Act of 1702 (1 Ann. stat. 2, c. 20, s. 50), and repeated in subsequent Acts to 1711. The impressment of persons having no settled mode of living was allowed by Acts passed between 1703 and 1711 (2 & 3 Ann. c. 13, 3 & 4 Ann. c. 10, 4 & 5 Ann. c. 21, 6 Ann. cc. 17, 48, 7 Ann. c. 2, 10 Ann. c. 12, in the Record Edition of the Statutes), and again by Acts of 1744 (17 Geo. II, cc. 15, 26), 1745 (18 Geo. II, c. 10), 1756 (29 Geo. II, c. 4), 1757 (30 Geo. II, c. 8), 1778 (18 Geo. III, c. 53), and 1779 (19 Geo. III, c. 10). In 1758, the Court of King's Bench discharged a man improperly pressed under the Act of 1757, *Rex* v. *Kessel*, Burrow's Rep. i. 637; and Grose, Mil. Antiq., i. 98, note (*b*) records the bad results of the Act of 1779. Provisions were made for the release of insolvent debtors from custody on condition of enlisting or finding persons to serve in their places in 1696 (7 & 8 Will. III, c. 12, s. 14), 1702 (1 Ann. c. 19), and 1703 (2 and 3 Ann. c. 10). See also 1 Geo. III, c. 17, s. 57. See Clode, Mil. Forces, ii. 8–19, 48–55, 587; Reports on Recruiting, Parliamentary Papers, 1861, Vol. xv.; and 1867, Vol. xv.; Appendix by Mr. Clode.

(*g*) For the history of enlistment since 1660, see Clode, Mil. Forces, ii. ch. xv. and the Parliamentary Papers mentioned in note (*f*) *supra*.

would otherwise have enlisted in the army. Since 1802, the policy has been to encourage enlistment from the militia into the army in time of war (*a*).

Contracts to raise troops subsequently to the Revolution in 1688.

39. In time of war, since the Revolution in 1688, the old system of contract has to some extent been reverted to, and troops have been raised by an agreement between the Crown and some nobleman or gentleman, who has undertaken to raise a corps on condition of receiving the nomination of all or some of the officers (*b*).

System of recruiting by beating orders.

40. Even in time of peace, the mode of raising troops down to 1783 was by a species of contract between the Crown and the colonel, who received from the Crown a beating order, enabling him to raise recruits, and was held responsible for enlisting sufficient recruits to raise and keep up the regiment to its proper numbers. The sums for recruiting expenses and for pay and clothing were issued to him in gross; and, subject to certain limitations as to the amount of bounties, he and his officers made their own bargains with the recruits (*c*).

Mode of defraying expenses of recruiting.

41. The sums for recruiting expenses in each regiment were carried to a fund called the stock purse, the accounts of which were made up annually, and the surplus (if any) was handed to the captains of the companies. The commission to a major or colonel appointed him also to be a captain of the regiment, so that he had a company of which he shared the profits, while it was commanded by a captain-lieutenant. The balances, however, were seldom large; and when vacancies became numerous from losses on service or other causes the cost of recruiting exceeded the allowance, and the officers were liable to heavy expenses, from which they were not unfrequently relieved by extra allowances. One survival of this system was the extra allowance made to the senior colonel and senior major (*d*).

Pecuniary interest of officers in system.

42. Under the above system the officers had a pecuniary interest in keeping down the expense of recruiting, both by obtaining men cheaply, and by prolonging the service of men enlisted, and so avoiding the necessity of obtaining recruits in their places. Fraudulent re-enlistment defrauded the captain, and as early as 1689 this offence was by the Mutiny Act made punishable with death (*e*). At the same time the system held out great temptations to frauds in mustering and drawing pay for non-effective men as effective, which, though restrained by provisions of the Mutiny Act, continued to prevail until the pecuniary interest of officers in the pay of the men ceased (*f*).

Abolition of system, 1783.

43. The above system was abolished in 1783 (*g*), and recruiting has ceased to be a matter of pecuniary interest to the officer, and is carried on by recruiting officers acting under the Director of Recruiting and Organisation in accordance with orders of the Secretary of State (*h*), and the expenses are paid directly by the Crown. Of late years the payment of bounties has been discontinued, but the power to issue them in times of emergency is

(*a*) The various difficulties which arose, and the expedients resorted to to remove them, are detailed in Clode, Mil. Forces, i. ch. xiv. See the Parliamentary Papers mentioned in note (*f*), p. 156.

(*b*) This system was known as that of "raising men for rank," see Clode, Mil. Forces, ii. 5. This system was resorted to in 1854, in the Crimean war.

(*c*) Clode, Mil. Forces, i. 74, 105, ii. 2–6.

(*d*) Clode, Mil. Forces, ii. chap. xv., and Appendix, note (WW), p. 568.

(*e*) 1 Will. & Mar., sess. 2, c. 4, s. 1; Clode, Mil. Forces, ii. 3.

(*f*) Clode, Mil. Forces, ii. 8–10.

(*g*) By 23 Geo. III, c. 50, known as "Burke's Act."

(*h*) Clode, Mil. Forces, ii. 10, 20, 55. The Enlistment Act. 1870, 33 & 34 Vict. c. 67, conferred statutory power on the Secretary of State to issue orders. This is re-enacted in the Army Act, s. 93.

Ch. IX.

retained. Ordinarily, a small pecuniary reward is given to recruiters and recruiting agents for each recruit raised and approved.

Term of service.

44. The term of service, after it ceased on the introduction of the standing army to be for a particular war only, has varied continually. As a general rule, until the year 1847, the term of service of men enlisted in time of peace was for life; but whenever the exigencies of war required additional troops, recourse was had to enlistment for a limited term of years (*a*).

Army Service Act, 1847.

45. In 1847 was passed the Army Service Act, which, as amended in 1849, limited first engagements to ten years for the infantry and twelve for the cavalry or artillery, but allowed re-engagements for such further periods as would make up a total service of 21 or 24 years, as the case might be; and a soldier, with the approval of the military authorities, might continue his service after the 21 or 24 years, until he gave three months' notice of his wish to be discharged (*b*). During the Crimean War (1855) and Indian Mutiny (1858) power was given temporarily to the Crown to enlist and re-engage for shorter periods, and also to re-engage men in the cavalry and artillery for a period making up 24 years' service (*c*).

Army Enlistment Act, 1867.

46. By the Army Enlistment Act, 1867 (*d*), first engagements were to be for 12 years in the infantry as well as in the cavalry and artillery, with power to re-engage for such a period as would make up 21 years' service, whether in the infantry, the cavalry, or the artillery, and the provision as to a soldier continuing in the service after 21 years, until he gave three months' notice of his wish to be discharged, was re-enacted.

Army Enlistment Act, 1870, and Reserves.

47. These provisions continued until the Army Enlistment Act, 1870 (*e*), when the system known as the short service system was introduced for the purpose of securing a body of reserves.

The Army Reserve had been established in 1867 to consist of men enlisted from soldiers serving, or having served, in the army, and to be a separate body with their own officers. The Act of 1870 practically altered its character, and the Reserve Forces Act, 1882, has made corresponding alterations in the law.

The Militia Reserve was also established in 1867, and was, with minor differences, the same as that which may be raised under the present Act (*f*).

Government of Army since 1660.

48. The government of the Army since 1660 is dealt with in Chapter II; it may, however, be observed here that when the army became a constitutional army, that is, dependent on the consent of Parliament for its maintenance, the obligation to serve was allowed to be enforced by courts-martial with military procedure, and not merely as before, by the civil courts. The power to govern the army, as mentioned above, is annually given by

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(*a*) Under several Acts in the time of Anne and Geo. II, and also under the Acts for impressment before referred to, the term of service was for a limited term of years. After 1829 men were enlisted for life only, and this continued until 1847.

(*b*) 10 & 11 Vict. c. 37; 12 & 13 Vict. c. 73. The power of cavalry and artillery to re-engage for 12 years, making a total of 24, was repealed by the Act of 1849. Section 1 of the first Act limited the first engagement to a maximum of 10 and 12 years respectively, but the words in the schedules as to the mode of filling up the attestation paper were construed to prevent an enlistment for any shorter period than the above terms. See the preamble to 18 & 19 Vict. c. 4.

(*c*) 18 & 19 Vict. c. 4; continued by 21 & 22 Vict. c. 55.

(*d*) 30 & 31 Vict. c. 34.

(*e*) 33 & 34 Vict. c. 67; the provisions re-enacted in Army Act are stated in ch. x.

(*f*) Reserve Forces Act, 1867, 30 & 31 Vict. c. 110; Militia Reserve Act, 1867, 30 & 31 Vict. c. 111, amended by 33 & 34 Vict. c. 67; 34 & 35 Vict. c. 86; Mutiny Act, 1878, s. 107; 42 & 43 Vict. c. 32, s. 5.

Parliament; but when given is exercised, as in the navy and civil service, by the Crown alone. The manner in which that power is exercised is constitutionally subject, like the exercise of other prerogatives, to the advice of the ministers of the Crown, of whom the one particularly responsible for the army is one of the principal Secretaries of State.

Finance of the army.

49. With respect to the payment of the army, the annual sanction of the army by Parliament removes the old difficulties, as Parliament grants the money for its maintenance. But the existence of a standing army rendered necessary a permanent machinery for administering that money. The history and nature of that machinery is hardly within the scope of the present work, and therefore a brief statement only can be made (*a*).

Grant of money by Parliament.

50. In the case of the army, as in that of the civil departments of Government, Parliament grants the necessary money on estimates submitted by the Crown, and the money granted is expended by the Crown, subject to control and audit on the part of Parliament (*b*).

Issue of pay.

51. The pay of the soldiers of each regiment was formerly issued to the colonel by the Paymaster-General (a civil officer, and often a member of Parliament), and his subordinates, who were civilians. It is now practically issued by the Paymaster-General and disbursed through the captains of companies, each of whom keeps an account with the men of his company.

Clothing.

52. The clothing of each regiment used to be supplied by the colonel, according to a pattern selected by a clothing board, and was paid for by him out of his allowance for "off-reckonings"; but since 1854 the clothing has been supplied direct by the clothing department.

Military stores.

53. The money granted for military stores was formerly expended by the civil part of the Board of Ordnance, a department which dates back before the Restoration, and of which the chief was the Master-General of the Ordnance, often a Cabinet Minister.

Barracks.

54. The money granted for barracks, after being for a time expended under a special barrack department, which was at first of a purely military character, and afterwards partly civil, was eventually transferred to the Board of Ordnance.

Provisions and transport.

55. The money granted for provisions and transport was expended through the Commissariat, who were civilians and officials of the Commissioners of the Treasury. From 1704 to 1836 there were other civil officers, called Controllers of Army Accounts, whose duty it was to examine and check army accounts and contracts, and to report to the Treasury on frauds and abuses. One of them was sometimes present with the army. Their office was in 1836 merged in the Board of Audit.

Army extraordinaries.

56. For many years, besides the expenditure of the sums which were voted by Parliament upon estimates, there were expended large sums known as "army extraordinaries," which began with extraordinary expenses which could not be foreseen when the estimates were submitted to Parliament; but the system became an abuse, and was ultimately abolished in 1836. While it existed, the money was expended at first entirely by military officers, but during the present century partly by military officers and partly through the Commissariat or other civil officers.

Secretary at War.

57. The office of Secretary at War dates from the reign of Charles II and began as that of a private secretary to the

(*a*) For a fuller account, see Clode, Mil. Forces, chs. vi, vii, xxi, xxiii, on which the following summary is founded.

(*b*) For early instances of this control, see Forster's Life of Sir J. Eliot, i. 158.

Sovereign in military matters. This officer afterwards usually held a seat in Parliament as one of the Ministry. His position and duties were vague, but he undoubtedly was a civil officer, and had, especially after 1783 (Burke's Act), great control over the financial and other civil administration of the army; after 1783 he was responsible for the estimates of military expenditure submitted to Parliament; but he had no direct control over the artillery or engineers, or over the *matériel* of the Force. He was, however, subordinate to the Cabinet, and especially to the third Secretary of State, when that office was created (*a*). The duties of the office of Secretary at War were taken over by the Secretary of State in 1855, and the office was abolished in 1863 (*b*).

Commander-in-Chief and Judge Advocate-General.

58. By the side of the civilian officers above-mentioned there was the purely military administration, which remained under the direction of the Sovereign as Commander-in-Chief, assisted by a board of General officers, till the establishment of the office of the General Commanding-in-Chief in 1793 (*c*). The administration of military law was, however, checked by the Judge Advocate-General, a Privy Councillor, and usually a member of Parliament and one of the ministers of the day, who advised the Sovereign on the legality of the proceedings of courts-martial (*d*). The office of Judge Advocate-General, having ceased to be paid, was, in 1892, made non-political, and was, from that date down to 1905, held by the President of the Probate, Divorce, and Admiralty Division. In that year, on a new appointment being made to the office, the position of the Judge Advocate-General was considerably altered. He is now a permanent official under the orders of, and acting as legal adviser to, the Secretary of State; he is no longer a Privy Councillor, nor does he advise the Crown directly.

The office of Commander-in-Chief ceased to exist in the early part of 1904, and the Patent creating the Army Council (February, 1904) (*e*), transferred to that body among other powers the powers theretofore exercised by the Commander-in-Chief under the Royal Prerogative.

Secretary of State for War.

59. At the end of the eighteenth century, a third Secretaryship of State (*f*) was created, the holder of which was to have a general superintendence of the army and the colonies. During the peace after 1815, when the army was less important, and the colonies grew more important, the colonial part of the work absorbed most of the Secretary of State's attention. The outbreak of the Crimean War again called greater attention to the army, and in 1854 a new Secretary of State was created, and shortly afterwards the whole civil administration of the army was placed in his hands. The powers and duties of the Board of Ordnance

(*a*) See para. 59 below, and Clode, Mil. Forces, chaps. iv., xxi.

(*b*) 26 & 27 Vict., c. 12.

(*c*) See Clode, Mil. Forces, chap. xxvi. The Sovereign is Commander-in-Chief, unless the office is granted away. The Duke of Marlborough, in Queen Anne's reign, was appointed Commander-in-Chief, and commissioned officers by his own authority. The Duke of Cambridge was appointed Commander-in-Chief in 1887, but had no power under the Patent to issue commissions; and neither Lord Wolseley, who succeeded the Duke of Cambridge as Commander-in-Chief in 1895, nor Lord Roberts, who succeeded to the office in 1901, had power to issue commissions. In India there is a Commander-in-Chief, but without power to commission officers, except temporarily, until the King's pleasure is taken.

(*d*) Clode, Mil. Forces, chap. xxvii.

(*e*) See para. 59A below.

(*f*) All the Secretaries of State have equal powers, so that, though in practice different Secretaries of State administer different departments, technically there is no distinction between them. A third Secretary of State had been created in 1768, but the office was abolished in 1782 by 22 Geo. III, c. 82. It was, however, revived in 1794; Sir Erskine May, Const. Hist., iii. 360; Clode, Mil. Forces, ii. 320.

and of the Secretary at War were transferred to him, and the commissariat officials, and also the Paymaster-General, so far as concerned the army, were also placed under his orders (*a*). In 1858 the commissariat officials were made military officers, subject to the direction of the General commanding the force to which they were attached. But whether the officials engaged in the administration and discipline of the army are civil or military, the Secretary of State for War, a member of one of the Houses of Parliament and a Cabinet Minister, is responsible for the acts of all of them, and is the constitutional and responsible adviser of the Crown in all questions connected with the army. The ultimate responsibility of the Secretary of State was in no way affected by the reorganisation of the War Office and creation of the Army Council in 1904.

In 1870 the transfer of the officers who exercised the military administrative functions from the Horse Guards to the War Office brought every branch of army administration under the direct and immediate control of the Secretary of State. The actual army administration was divided between the officer Commanding-in-Chief, the Surveyor-General of Ordnance, and the Financial Secretary. In 1888 (*b*) the Commander-in-Chief became solely responsible to the Secretary of State not only for the efficiency of the men but also of the *matériel*, the responsibility for all accounts, contracts, and manufactures remaining with the Financial Secretary. This concentration of military responsibility in the Commander-in-Chief was abolished in 1895 (*c*) and divided between (1) the Commander-in-Chief, who retained the responsibility for general command over the military forces at home and abroad, and the general supervision of the military departments of the War Office; (2) the Adjutant-General, who was responsible for the discipline and training of the troops, and for recruiting and discharging; (3) the Quartermaster-General, who had direct charge of the food, forage, quarters, fuel, and transport of the army, and of the pay department; (4) the Inspector-General of Fortifications, who had charge of barracks, fortifications, &c., and of the engineer services; and (5) the Director-General of Ordnance, who issued demands for, inspected, and had custody of warlike stores and equipment, dealt with patterns and inventions, and administered the Army Ordnance Department and Corps. Each of these five officers was directly responsible for his department to the Secretary of State.

A further change was made in 1901 (*d*), when the Military Department was divided into four, instead of five, departments, the Adjutant-General being made subordinate to the Commander-in-Chief, while the Inspector-General of Fortifications, the Quartermaster-General, and the Director-General of Ordnance remained in the same position as under the Order of 1899.

Army Council.

59A. The question of the organisation of the Army and the War Office again came to the front on the conclusion of the recent war in South Africa, and in 1904 (following the lines of the report of the War Office (Reconstitution) Committee (*e*)) the administration

(*a*) See 18 & 19 Vict. cc. 10, 11; 26 & 27 Vict. c. 12.
(*b*) Orders in Council of 29th December, 1887, and 21st February, 1888.
(*c*) Order in Council of 21st November, 1895. An Order in Council of the 7th March, 1899, superseded the Order of 1895, but substantially reproduced its provisions, except that the direction of Army Factories was transferred to the Ordnance Branch, subject to the financial control of the Financial Secretary.
(*d*) Order in Council of 4th November, 1901.
(*e*) Parliamentary Papers, 1904. Cd. 1963.

Ch. IX.

of the Army was placed in the hands of an Army Council, created by Letters Patent of the 6th February, 1904, which vested in that Council all the prerogative powers of the Crown in relation to the Army which had theretofore been exercised by the Secretary of State, the Commander-in-Chief, and other principal officials.

The Council as so constituted consists of seven members, viz.: the Secretary of State, four Military Members (the Chief of the General Staff, the Adjutant-General, the Quartermaster-General, and the Master-General of Ordnance), a Finance member and a Civil member.

The Secretary of State remains responsible to the Crown and Parliament for all the business of the Council, while under him the business is divided up as follows:—The military members are responsible for the administration of so much of the business relating to Army organisation, disposition, personnel, armament and maintenance as is assigned to them or any one of them by the Secretary of State; the Finance member is charged with Army finance, and the Civil member is responsible for the non-effective votes. The Secretary of State may assign any other business either to the Finance member or the Civil member. The Finance Member is assisted by the Director-General of Army Finance, who allows and pays all moneys for Army services, audits all cash expenditure, and prepares the accounts of that expenditure for Parliament (*a*).

In addition to the above officials, there is an Inspector-General of the Forces, who acts under the orders of the Army Council, to whom he is charged with reporting as to the training and efficiency of the troops, the readiness and fitness of the Army for war, and generally on the practical results of the policy of the Council.

Audit of military accounts.

60. The audit of military accounts has remained independent of the Secretary of State, and is now conducted on behalf of the House of Commons by the Audit Department under the Controller-General of the Receipt and Issue of His Majesty's Exchequer and the Auditor-General of the Public Accounts, commonly called the Controller and Auditor-General.

Militia.

Periods of history of militia.

61. The history of the militia, since the Restoration in 1660, divides itself into four periods: (1) from 1660 to 1757, (2) from 1757 to 1815, (3) from 1815 to 1852, during which the militia was practically in abeyance, and (4) from 1852 to the present time, during which the volunteer militia has existed. The militia, after a general sketch of its history during these periods, will be treated under the same three heads as the army, namely:—Raising, Government, and Payment.

General and local militia.

62. The militia, commonly so called, is the general or regular militia, as distinguished from the local militia which was established at the beginning of the last century, and which, though in abeyance, might still legally be raised. At the beginning of the nineteenth century also several Acts were passed relating to forces other than the regulars and militia, which will require notice (*b*).

First period. Organisation of

Although the feudal levy was abolished in 1660, the liability to serve in the general levy has never been extinguished (*c*), and

(*a*) Orders in Council of 10th August, 1904.

(*b*) As to these Acts and the local militia, see para. 101, *et seq.*

(*c*) The Act 4 & 5 Phil. & Mar. c. 3 (for musters) was not repealed until 1863, when it was repealed as obsolete by the Statute Law Revision Act (26 & 27 Vict. c. 125), with wide savings as to its effect.

remains not only in constitutional theory, but also in the statutory and practical form of liability to serve both in the general and the local militia.

militia on Restoration in 1660.

63. The command of the trained bands, or militia, and the disposal of their arms, and the appointment and removal of the lieutenants of counties had, as before mentioned, formed one of the principal subjects of dispute between Charles I and the Long Parliament, in the course of which the name "militia" came into general use (*a*). On the Restoration, therefore, it was necessary that these questions should be dealt with; and a Bill for settling the militia was introduced into the Commons in the Parliament by which Charles II was recalled, but met with great opposition, "because there was martial law provided in it" (*b*). Consequently, though the feudal levy was abolished, Parliament was dissolved before any militia Bill could be passed. In the next Parliament the question was at once taken into consideration, and an Act was passed (*c*) to legalise for a year the training of "the militia and land forces" under the lieutenants of counties, to whom Charles II had in the meanwhile issued commissions.

Acts passed 1662–1745.

64. In the following year (1662) an Act was passed "for ordering the forces in the several counties in the kingdom"; and by this Act, as amended by an Act passed in 1663, the militia was at length organised, and the trained bands, except in the City of London, were ordered to be discontinued (*d*). Further provision was made for the new force by Acts of the subsequent reigns (*e*), and it was called out in 1690 on the occasion of the French invasion, and again during the rebellions of 1715 and 1745 (*f*).

Second period. Reorganisation of militia after rebellion of 1745.

65. The rebellion of 1745 brought into notice the general inefficiency of the force; and in 1756 attention was called by a panic as to a French invasion, and by the introduction of Hanoverian troops, for which the apprehended invasion had been made an excuse, to the necessity of strengthening the national defensive forces. Accordingly, in 1757 (rather against the will of the Ministers, and only for a period of five years) an Act was passed by which the force was re-organised on nearly the same basis as that on which the balloted militia now rests (*g*). Opposition arose in several counties to the execution of this Act, and difficulty

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(*a*) See above, para. 22. "Militia" seems to have been used as early as 1590; see Scott, Brit. Army, i. 448 (note), Bacon's Essays, and Raikes' Hist. of the Hon. Artill. Compy., i. 106, 110, and it is constantly used in the reports of the proceedings in Parliament in 1640 and 1641; Cobbett, Parly. Hist., ii.; though Whitelocke, in 1641, speaks of it as "this new word, this hard word"; *ibid.*, ii. 1078; Rushworth, Historical Collections iii. pt. i. 525; Clode, Mil. Forces, i. 31 (note).

(*b*) Commons Journals; Cobbett, Parly. Hist., iv. 145.

(*c*) 13 Cha. II, stat. 1, c. 6. The preamble refers to the pending Bill for the militia.

(*d*) 14 Cha. II, c. 3; 15 Cha. II, c. 4. As to the discontinuance of the trained bands in fact, see Clode, Mil. Forces, i. 86. The old power to enlist and levy the trained bands in the City of London continued unaltered (being saved by the various Militia Acts) until 1794, when an Act was passed (34 Geo. III, c. 81), for the organisation of a militia force in the City. This Act (as amended by 35 Geo. III, c. 27), was subsequently repealed by 36 Geo. III, c. 92; and that Act, as amended by 39 Geo. III, c. 82 (see also 42 Geo. III, c. 90, s. 153) was in its turn repealed by 1 Geo. IV, c. 100, which still remains in force. As to the use of the term "trained bands" in the above Acts, see Raikes' Hist. of the Hon. Artillery Company, ii. 146.

(*e*) 7 & 8 Will. III, c. 16, which, after being re-enacted by 9 Will. III, c. 31, 11 Will. III, c. 14, 12 Will. III, c. 8, was made perpetual; 1 Ann. stat. 2, c. 15, 4 & 5 Ann. c. 10, 6 Ann. c. 28, 10 Ann. c. 33, 1 Geo. I, stat. 2, c. 14, 9 Geo. I, c. 8, 19 Geo. II, c. 2.

(*f*) See preamble to 2 Will. & Mar. sess. 2, c. 12, and 7 Geo. II, c. 23. Lord Mahon, Hist. of England, iii. 398–422.

(*g*) 30 Geo. II, c. 25, amended by 31 Geo. II, c. 26, 32 Geo. II, c. 20, 33 Geo. II, cc. 22, 24. See Clode, Mil. Forces, i. 39–42; Cobbett, Parly. Hist, xv. 782; Lord Mahon, Hist. of England, iv. 133.

Ch. IX.

was experienced in obtaining officers (*a*); and several Acts were subsequently passed for the purpose of enforcing the execution of the law. Progress was, however, made, and the force was embodied in the year 1759 (*b*).

Consolidation of Militia Acts.

66. The Acts relating to the Militia were consolidated in 1761 (*c*), and again in 1786, when the greater number of the regiments had been raised (*d*), and the utility of the force was emphatically recognised by Parliament in the preamble to the consolidating Act (*e*). The Acts were again consolidated in 1802, after the peace of Amiens, by 42 Geo. III, c. 90, which Act, as subsequently amended (*f*), is still in force as regards the ballot. Between 1802 and the peace in 1815, numerous additional Acts were passed with respect to the militia, some of which were of a permanent character, but the greater number were temporary measures, and had reference either to the relations between the militia and the other forces then raised under certain special Acts, or to enlisting men for the militia by beat of drum, or to enlistment from the militia into the army (*g*). Except in the years 1830 and 1831 (*h*), a ballot for the militia does not seem ever to have been actually held since 1810 (*i*). A motion in Parliament in 1813 to suspend the ballot was defeated, and in 1814, on a motion in relation to the disembodiment of the militia, reference was made to the hardship of keeping balloted men away from their families (*j*).

Third period, 1815–1852.

67. After the peace of 1815 the militia was allowed practically to fall into abeyance, although the permanent staff were maintained. The first step was to allow the annual training to be

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(*a*) Clode, Mil. Forces, i. 39; Lord Mahon, Hist. of England, iv 134.

(*b*) Clode, Mil. Forces, i. 40.

(*c*) By 2 Geo. III, c. 20, which was at first enacted for seven years only, but was made perpetual by 9 Geo. III, c. 42. It was amended by 4 Geo. III, c. 17; 5 Geo. III, cc. 34, 36; 6 Geo. III, c. 30; 7 Geo. III, cc. 15, 17; 9 Geo. III c. 42; 11 Geo. III, c. 32; 16 Geo. III, c. 3; 18 Geo. III, cc. 14, 59; 19 Geo. III, cc. 72, 76; 20 Geo. III, cc. 8, 44; 21 Geo. III, cc. 7, 18; 22 Geo. III, cc. 6, 62; 24 Geo. III, sess. 1, c. 13.

(*d*) In the circular of 30th April, 1833 (printed in Clode's Militia Act, 1875), the regiments are described as having been raised as follows: 47 before the peace of 1763, 22 between the peace of 1763 and the peace of 1783, and 21 for the revolutionary war. This circular announced their precedence as settled by lot.

(*e*) See Clode, Mil. Forces, i. 43. The Act of 1786 (26 Geo. III, c. 107) was amended by 33 Geo. III, c. 8; 34 Geo. III, cc. 16, 47; 35 Geo. III, c. 83; 38 Geo. III, c. 55; 39 Geo. III, cc. 90, 106; 39 & 40 Geo. III, c. 1; 42 Geo. III, c. 12. In addition to these Acts, several Acts were passed relating to the supplementary militia, *i.e.*, an addition to the militia above the quota, and also Acts relating to the militia of particular localities which still have separate militia corps, namely—

(1) The City of London, 34 Geo. III, c. 81, and 35 Geo. III, c. 27, which were consolidated by 36 Geo. III, c. 92, and that Act as amended by 39 Geo. III, c. 82, was saved in 1802 by 42 Geo. III, c. 90, s. 153, but was repealed in 1820 by 1 Geo. IV, c. 100, which is still partly in force. See Militia Act, 1882, s. 49.

(2) The Militia in the Stannaries known as the "Regiment of Miners," 38 Geo. III, c. 74, and 42 Geo. III, c. 72, the latter of which recites that a great length of time had elapsed since any commission had issued to the Warden of the Stannaries to array, arm, and exercise the miners. This Act is still partly in force. See Militia Act, 1882, s. 49.

The separate Militia of the Tower Hamlets (37 Geo. III, cc. 25, 75) was merged the Militia of the County of London by the Local Government Act, 1888, s. 91.

(*f*) See especially 43 Geo. III, c. 50; 51 Geo. III, c. 118; 15 & 16 Vict. c. 50; 23 & 24 Vict. c. 120.

(*g*) See 43 Geo. III, c. 10, c. 19, c. 47, c. 50, c. 100; 44 Geo. III, c. 54, s. 16, c. 56; 45 Geo. III, c. 31; 46 Geo. III. c. 91, c. 140; 47 Geo. III, sess. 2, c. 57, c. 71; 49 Geo. III, c. 4, c. 53; 50 Geo. III, cc. 24, 25; 51 Geo. III, c. 17, c. 20, c. 118, c. 128; 53 Geo. III, c. 81; 54 Geo. III, c. 11; 55 Geo. III, c. 65, c. 168. As to these Acts, their reasons and effect, see Clode, Mil. Forces, i. 287. Besides the above, there were Acts relating to Scotland and Ireland.

(*h*) See note (*b*) on p. 165.

(*i*) See Mr. Clode's evidence and App. XVII to report of Mr. Stanley's Militia Committee, 1876 (Parl. Paper, 1877, C.—1654).

(*j*) Clode, Mil. Forces, i. 290–299; Annual Register, 1813, p. 207.

suspended by Order in Council (*a*). Then, from 1829 to 1865, an Act was passed annually suspending all proceedings for raising the militia by ballot, unless ordered by Order in Council, and the Act of that year has since been annually continued by the Expiring Laws Continuance Act (*b*).

Fourth period. Re-organisation of the militia in 1852.

68. In 1848 some excitement was felt with respect to the military position of the country in consequence of the great increase of armaments on the Continent, particularly in France. The subject was mentioned in Parliament, and the Prime Minister (Lord John Russell), in making his financial statement in 1848, expressed his intention of introducing a Bill for re-establishing the militia. Nothing, however, was done until 1852, when he proposed to reorganise the local militia, but this proposal was rejected by the House of Commons, in favour of an amendment (proposed by Lord Palmerston) to reorganise the regular militia. This vote led to a change of Ministry, and the next Ministry, of Lord Derby, introduced a Bill for reorganising the regular militia, which was ultimately passed into law (*c*), and ever since the militia has been raised by voluntary enlistment. The militia law was amended from time to time between 1852 and 1875 by Acts, some portions of which applied to the volunteer militia, and others only to the force when raised by ballot (*d*).

Militia Act, 1875.

69. In 1875 the enactments which related to the volunteer militia, and also those which related to the organisation, command, government, and service of the force, whether raised by ballot or by voluntary enlistment, were consolidated by the Militia Voluntary Enlistment Act 1875 (38 & 39 Vict. c. 69) which has been replaced by the Militia Act, 1882 (45 & 46 Vict. c. 49). Both of these Acts left unrepealed those enactments which related solely to the raising of men by ballot.

Raising of the militia. Act of 1662.

70. The Act of 1662 followed the old law by requiring owners of property to furnish horses, horsemen, foot soldiers, and arms as specified in the Act, in proportion to the value of their property; and the liability of persons of small property was to be discharged out of a rate levied in the parish for foot soldiers and arms. The Act, though not expressly recognising volunteers, enacted that a person liable should not be obliged to serve in person, but might provide an approved substitute.

Alteration in mode of raising men in 1757.

71. In 1757 the mode of raising the men was entirely changed, a liability on the part of the county and parish to provide men being substituted for a liability on the part of individuals. A certain number of men specified in the Act (usually known as the quota) were to be raised in each county, subject to certain powers of re-adjustment by the Privy Council. Lists of all men between the ages of eighteen and fifty in every parish in each county (except those expressly exempted) were to be sent to the lord lieutenant

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(*a*) First, by a temporary Act, in 1816 (56 Geo. III, c. 64), and in 1817 by a permanent Act (57 Geo. III, c. 57), under which orders for suspension were made in almost every year.

(*b*) 10 Geo. IV, c. 10. Orders in Council directing a ballot were made and put in force in 1830 and 1831 (Clode, Mil. Forces, i. 47; Parly. Papers, 1834, vol. 42, 103; Life and Struggles of William Lovett, p. 65; Hansard (1832), x. 376). The Act of 1865 is 28 & 29 Vict. c. 46. The number of the permanent staff was reduced by the Act of 1829, and again in 1835 by 5 & 6 Will. IV, c. 37, which also provided for the militia stores of a county being transferred to the Ordnance Department.

(*c*) 15 & 16 Vict. c. 50. See Hansard's Parly. Debates for the years 1848 and 1852; Clode, Mil. Forces, i. 46, 305–307.

(*d*) See 16 & 17 Vict. cc. 116, 133 (England); 17 & 18 Vict. c. 13, c. 105 (England); c. 106 (Scotland); c. 107 (Ireland); 18 & 19 Vict. c. 19 (Ireland); c. 100; 22 & 23 Vict. c. 38; 23 & 24 Vict. c. 94; c. 120 (England); 32 & 33 Vict. c. 13; 33 & 34 Vict. c. 63; 34 & 35 Vict. c. 86; 36 & 37 Vict. c. 68.

Ch. IX.

and the deputy-lieutenants, who were to hold meetings, and apportion the quota of the county among the different sub-divisions, and again sub-divide the quota of each sub-division among the parishes in proportion to their population, and then choose men by lot from each parish list up to the number apportioned to that parish. Every man so chosen had to serve for three years, or to provide a substitute, and vacancies were to be filled from time to time by a like process of ballot, which was to be repeated every three years. The above is practically the existing ballot system, although it has been frequently modified in details. Thus, the age of men liable to serve has been altered from time to time, and is at present, under the Act of 1860 (*a*), fixed between 18 and 30. Exemptions also have been added; as, for instance, the exemption of a poor man with more than one child (*b*). On the other hand, the term of service was extended from three years to five.

Fine for not raising quota.

72. In 1761 the raising of the militia was made compulsory by the imposition on counties of an annual fine for not raising the quota (*c*). This fine was at first 5*l.* for each man deficient, at one period it was as high as 60*l.*, and is now 10*l.* per man.

Volunteers recognised by Act of 1758.

73. Besides the substitutes allowed ever since 1662, the Act of 1758 enabled a parish to offer volunteers, and if they were accepted, to escape to that extent the liability to a ballot. If a volunteer so accepted failed to appear and be sworn and enrolled, the parish was bound to find another, or to pay out of the rates a fine of 10*l.* (*d*). The Act of 1758 further empowered captains, on the embodiment of the militia, to augment their companies by volunteers, and this and the amending Acts enabled lord lieutenants of counties to accept, first, single volunteers, and then whole companies of volunteers with their officers (*e*). At the end of the 18th century these volunteers developed into a separate force under separate Acts.

Changes in system during nineteenth century.

74. In 1810, the enlistment in the militia of volunteers by beat of drum as supernumeraries, to a number exceeding the regular quota, was authorised, and the ballot was only to be resorted to in case of a deficiency (*f*). The militia was thus a force raised by ballot with the subsidiary aid of voluntary enlistment. In 1852, however, the system was changed, and the militia became a force of voluntarily enlisted men, with the ballot in reserve, as the Act of that year empowered the Crown in England to resort to the

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(*a*) 23 & 24 Vict. c. 120.

(*b*) 42 Geo. III, c. 90, s. 43. At first Protestants alone were capable of serving; this restriction was abolished in 1797 for the supplementary militia (37 Geo. III, c. 22); and in 1802 for the regular militia.

(*c*) 2 Geo. III, c. 20, and amending Acts, above p. 164, note (*c*). This was re-enacted in 1769 (9 Geo. III, c. 42, which Act states that militia had not been raised in some counties), and again on the consolidation of 1786 (26 Geo. III, c. 107, s. 116, &c.), and at the beginning of the present century, 42 Geo. III, c. 90, s. 158; c. 91, s. 150 (as to Scotland).

(*d*) 31 Geo. II, c. 26, s. 17. A parish might practically discharge its liability to provide militiamen by paying the fine for non-attendance of a volunteer which under 31 Geo. II, c. 26, as stated in the text, was 10*l.* per head; and in 1761 and subsequently, parishes were authorised to give bounties out of the rates to volunteers; this led also to half of the current price of a volunteer being paid out of the rates to a balloted man or a substitute; 2 Geo. III, c. 20, ss. 45, 47; 42 Geo. III, c. 90, ss. 42, 122.

(*e*) 2 Geo. III, c. 20, s. 120; 18 Geo. III, c. 59, s. 8; 9 Geo. III, c. 76; these provisions were not re-enacted in the consolidation of 1786, but the power was renewed temporarily by 34 Geo. III, c. 16, which developed the volunteers as a separate force. See Clode, Mil. Forces, i. 80; and below, para. 110, *et seq.*

(*f*) Clode, Mil. Forces, i. 290–299. Only 797 men were actually raised by ballot, and there were 14,156 substitutes for balloted men. See App. XVII to report of Mr. Stanley's Committee on the Militia, 1876 (Parl. Paper, 1877 C.—1654).

ballot, in case the quota in any county was not raised by voluntary enlistment, and also in case of invasion or imminent danger. In 1854 Acts were passed which provided for the raising of militiamen both in Scotland and Ireland by voluntary enlistment (*a*).

The present militia consists entirely of men voluntarily enlisted under the directions of the Secretary of State for War; the suspension of the enactments as to the ballot being annually continued (see para. 67).

Numbers of the militia.

75. In 1662, the number of men to be raised was not limited except so far as it depended on the wealth and number of the persons liable to furnish or contribute to furnish men and horses.

Quotas under various Acts since 1757.

76. In 1757, the number to be raised was limited by the Act which fixed the quota to be raised by each county. The quota was altered from time to time; and in 1797 an addition to the quota, called the supplementary militia, was made, to last during the war, but it was soon merged in the regular militia (*b*). Under the Act of 1802 the Privy Council were to fix the quota every ten years, guided by the proportion between the number of men liable to serve (as appearing from the lists) and the quota fixed by the Act, and the Crown had power to increase the quota in time of invasion or rebellion. The Acts from 1852 to 1860, re-organising the militia, fixed the total number to be raised, with power to the Crown to increase it in case of actual invasion or imminent danger thereof (*c*).

Numbers under Act of 1871.

77. The Act of 1871 (now re-enacted in the Militia Act, 1882) directed that the numbers of the militia should be such as should from time to time be provided by Parliament (*d*), and such provision is in effect made by a vote of the sum required for the pay of a specified number of men, and the application of such sum by the Appropriation Act of each year. The quotas (which are only required in the event of a ballot) are to be fixed by the Privy Council (*e*); the existing quota was fixed in 1852, and continues until altered.

Conditions of service.

78. Under the Act of 1662 militiamen were liable to be called out for training and exercise, and also in the case of invasion, insurrection, or rebellion.

Annual training.

79. In 1757 the service of the militia was placed nearly in the position in which it remained until 1870, that is to say, the force was to be annually trained and exercised for a limited time, while in case of actual invasion or imminent danger thereof, or in case of rebellion, the Crown could order the force, or any part of it, to be drawn out and embodied. The period for the annual training was originally fixed in the Act, but afterwards left to be determined by the Crown; it must not be less than 21, nor more than 56 days, and the Crown can dispense with it entirely. In 1860 a preliminary training was required from every militiaman on his first entering the force, and this may now be continued as long as six months (*f*).

Power to embody.

80. The power of embodying the force in cases other than those before mentioned, after having been conferred on the Crown at various times by temporary measures (*g*), has now been

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(*a*) 17 & 18 Vict. cc. 106, 107.

(*b*) 37 Geo. III, c. 3, amended by 37 Geo. III, c. 22, and 38 Geo. III, cc. 17, 18, 19, 55; merged in the general militia by 39 Geo. III, c. 106.

(*c*) 15 & 16 Vict. c. 50; 17 & 18 Vict. cc. 106, 107; 23 & 24 Vict. c. 94, ss. 20 & 21.

(*d*) 34 & 35 Vict. c. 86, ss. 6, 7, 9, re-enacted by 45 & 46 Vict. c. 49, s. 3.

(*e*) 45 & 46 Vict. c. 49, s. 37.

(*f*) 23 & 24 Vict. c. 4, s. 14; c. 120, s. 19; 34 & 35 Vict. c. 86, s. 8; see now 45 & 46 Vict. c. 49, s. 14.

(*g*) In 1776, with a view to the suppression of the rebellion in America, embodiment was authorised, in case of rebellion in Great Britain or any territories or dominions thereunto belonging, by 16 Geo. III, c. 3; in 1815 on "the prospect of a war with

Ch. IX.

permanently enacted. In 1854 (the Crimean War), the Queen was authorised to embody the militia whenever a state of war existed between Her Majesty and any foreign power (*a*); but in 1870 the old provisions were superseded by the enactments authorising the embodiment in case of imminent national danger or great emergency, which were re-enacted in 1882, and are now in force (*b*). Ever since 1757 the law has required that the cause of embodiment should be communicated to Parliament if sitting, or declared in Council and notified by proclamation if Parliament is not sitting, and that, thereupon, Parliament, if adjourned or prorogued, should meet within a limited time, which now is 10 days (*c*).

Militia liable to serve only in United Kingdom.

81. The militia are liable to serve in any part of the kingdom, but not out of it; and under this rule, the English militia were originally not liable to serve in Scotland or Ireland. The militia must now serve in any part of the United Kingdom (*d*). This was first provided in 1811 (*e*), subject to certain restrictions, and then in 1859 (*f*) without those restrictions, which were entirely repealed by the Act of 1875. In 1859 a power was given to the Sovereign to accept voluntary offers by the militia to serve in the Channel Islands and the Isle of Man; this was extended by the Act of 1875 to service in Malta and Gibraltar; and as so extended was re-enacted in 1882 (*g*). A further extension to any part of the world was made in 1898. At the same time the Crown was authorised to employ militiamen volunteering to serve for not more than one year, whether an order embodying the militia was in force at the time or not (*h*).

Term of service.

82. A fixed term of service was first provided in 1757, and was then limited to three years, but afterwards increased to five years, at which it at present stands for balloted men. In 1873 power was given to enlist volunteer militiamen to serve for any

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France," by 55 Geo. III. c. 77 (see Clode, Mil. Forces, i. 48); in 1857 and 1858, on the occasion of the Indian Mutiny, 20 & 21 Vict. c. 82; 21 & 22 Vict. cc. 4, 86.

(*a*) 17 & 18 Vict. c. 13. As to the effect of this on the men already enlisted, see Clode, Mil. Forces, i. 46.

(*b*) 33 & 34 Vict. c. 68, which did not apply to any man already enlisted, without his consent. The authority in this Act to raise additional militia in case of imminent national danger or great emergency was not re-enacted on the repeal of the Act in 1875, having been rendered unnecessary by the Act of 1871, declaring that the number of the force shall be such as may from time to time be provided by Parliament. The present enactments are in 45 & 46 Vict. c. 19, s. 18.

(*c*) 45 & 46 Vict. c. 49, s. 19.

(*d*) 45 & 46 Vict. c. 49, s. 12, re-enacting 38 & 39 Vict. c. 69, s. 49. The oath for balloted men in 51 Geo. III, c. 118, s. 1, and for volunteer militiamen in 38 & 39 Vict. c. 69, s. 31, specified the area of service, but this being inconsistent with the provisions for volunteer service in Gibraltar, Malta, &c., was omitted by 45 & 46 Vict. c. 49, s. 13. Since 1757 the English militia have been liable to serve in Scotland.

(*e*) 51 Geo. III, cc. 118, 128; 51 Geo. III, c. 114 (Regiment of Miners); 53 Geo. III, c. 132 (Tower Hamlets); 54 Geo. III, c. 10. See Clode, Mil. Forces, i. 301, 302, as to the opposition to the Acts. The principle had been adopted in temporary Acts, as in 1798, when some English regiments volunteered to serve in Ireland, and Acts were passed by the Parliament of Great Britain to enable His Majesty to accept the offer, and by the Parliament of Ireland to provide for the government of the forces so employed (38 Geo. III, c. 66, continued by 39 Geo. III, c. 5; 39 & 40 Geo. III, cc. 9, 15; 38 Geo. III (I.), c. 46; 39 Geo. III (I.), c. 64, ss. 13, 14). And again, in 1799 and 1804 and the following years, when some of the Irish regiments volunteered to serve in Great Britain, and Acts were passed to enable His Majesty to accept the offers (39 Geo. III (I.), c. 31; 44 Geo. III, c. 32, continued by 46 Geo. III, c. 31; 47 Geo. III, sess. 1, c. 6).

(*f*) 22 & 23 Vict. c. 38, ss. 1, 2.

(*g*) 22 & 33 Vict. c. 38, s. 4; 38 & 39 Vict. c. 69, s. 50; 45 & 46 Vict. c. 49, s. 12. A similar power had been given temporarily at the time of war in 1813 (54 Geo. III, cc. 1, 17), in 1855 (18 & 19 Vict. c. 1), and in 1858 (21 & 22 Vict. c. 85). In these cases, however, the number was limited to three-fourths of each regiment, though the area of service extended in the first case to Europe, and in the second and third cases to any place out of the United Kingdom.

(*h*) Reserve Forces and Militia Act, 1898.

period not exceeding six years, and to re-enlist men for a further period not exceeding six years (*a*).

Command of militia. Act of 1661.

83. The Act of 1661, temporarily legalising the militia under Charles II, referred to the dispute with Charles I as to the command of the militia, first by its title, in which it was described as "An Act declaring the sole right of the militia to be in the king, and for the present ordering and disposing the same"; and also by its preamble, which was expressed as follows: "Forasmuch as within all His Majesty's realmes and dominions the sole supreme government, command, and disposition of the militia, and of all forces by sea and land, and of all forts and places of strength is, and by the lawes of England ever was, the undoubted right of His Majesty and his royall predecessors, Kings and Queenes of England, and that both or either of the Houses of Parliament cannot nor ought to pretend to the same, nor can nor lawfully may raise or leavy any warr, offensive or defensive, against His Majesty, his heires, or lawful successors" (*b*).

Powers of Lord Lieutenants under Act of 1662.

84. The Act of 1662 (*c*), which re-organised the militia, while recognising by a preamble in identical terms the right of the Crown, practically took it away. It required the King under statutory power to issue Commissions of Lieutenancy for the different counties in England, and conferred on the lieutenants so appointed the chief powers in relation to the militia. They were empowered to commission the officers, raise the men, form the regiments, muster and exercise them, and in case of insurrection or invasion, to lead the forces as well within their counties as in any other counties in England. The result of the chief powers being vested in the lieutenants of counties was that the militia was regarded as a counterpoise of the standing army (*d*), and as a constitutional force under the control of Parliament rather than of the Crown, and for this reason was not made subject to military law (*e*).

Powers of Crown.

85. A power was indeed reserved to the King to appoint and remove the officers, and to give directions to the lieutenants as to arraying and dealing with the forces. But the Act of 1757 (*f*) limited this, leaving to the Crown only the power to approve and dismiss deputy lieutenants and to dismiss officers, while the local character of the force was intensified by requiring the lieutenants of counties and deputy lieutenants and officers to be qualified by the possession of landed property in their counties. On the other hand, the King was empowered to place the force, when embodied, but not during the annual training, under the command of a general officer; and had also power to appoint former officers and soldiers of the army to be adjutants and sergeants.

Changes in 1852 and subsequently.

86. The command of the militia remained in the same position until 1852, with the exception that ex-officers of the army and navy were permitted to serve without the property qualification. After the revival, however, of the militia in 1852, a change was

(*a*) 36 & 37 Vict. c. 68, s. 1 (which uses the old term "enrol") re-enacted in 1875, 38 & 39 Vict. c. 69, s. 32, and in 1882, 45 & 46 Vict. c. 49, s. 8 (2).

(*b*) 13 Cha. II, stat. 1, c. 6. This preamble, which in terms goes beyond the title of the Act, and includes forces besides the militia, is still unrepealed. The rest of the Act was repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125).

(*c*) 14 Cha. II. c. 3.

(*d*) Clode, Mil. Forces, i. 36, 37.

(*e*) See exemption from the Mutiny Act, 1 Will. and Mar., c. 5, s. 7. The pay was appropriated by Act of Parliament and not by warrant, and the estimates originated with a Committee of the House of Commons. Moreover, only one month's pay and therefore one month's service could be obtained without coming to Parliament. The preamble to the Act of 1802 laid stress on the force being under the command of officers having landed property.

(*f*) 30 Geo. II, c. 25.

Ch. IX.

made. The property qualification of the officers was reduced, and, after a further reduction in 1854, was entirely abolished in 1869, so that the officers ceased to be necessarily connected with the county or with the landed interest (*a*). Moreover, by the Act of 1852 and subsequent Acts, much larger powers were conferred on the Crown, both as to the qualifications and training of the officers, and as to other matters concerning the militia (*b*); but any detailed notice of these powers is rendered unnecessary by the complete transfer of the powers of the lieutenants of counties to the Crown by the Act of 1871 (*c*).

Powers of Lord Lieutenant re-vested in Crown by Act of 1871.

87. In 1871 it was determined to combine the regular and auxiliary forces in one organisation in connection with different territorial districts. In furtherance of this scheme an Act was passed (*c*), by which the command of the auxiliary forces with all the powers of the lieutenants of counties and those of the Lord Lieutenant in Ireland in relation to any of such forces (except those relating to the raising of the militia by ballot) were re-vested in the Crown, and declared to be exercisable through a Secretary of State, or any officers to whom Her Majesty, with the advice of a Secretary of State, might delegate such command and powers. The same Act also provided that the officers of the auxiliary forces should hold commissions from Her Majesty in the same manner as the officers of the regular forces; but a limited right of recommending persons for first commissions was reserved to the Lieutenants of counties.

Status of militia officers.

88. Up to 1882 it was provided by statute that militia officers should rank with officers of the regular forces as the youngest of their rank (*d*); militia officers are now not only commissioned like officers of the regular forces, but are always subject to military law, and they may sit on courts-martial for the trial of offenders belonging to the regular forces, and *vice versâ* (*e*).

Provisions of Act of 1881.

89. The Army Act, to remove all doubt as to the power of command, declared that Her Majesty might make regulations as to the persons to exercise command over any part of Her forces, including the militia (*f*). The Militia Act, 1875, and the Regulation of the Forces Act, 1881 (re-enacted in 1882), also gave Her Majesty complete power to provide for the formation of militiamen into regiments or other military bodies, the formation of them into corps, and the distribution of the men among the corps, and generally for the government of the force (*g*).

Militia not subject to Mutiny Act at all till 1757.

90. The Act of 1662 authorised Lieutenants of counties to imprison mutineers and soldiers not doing their duties, and to inflict small fines or twenty days' imprisonment as a punishment; but it was not till 1757 that the force was made, when embodied, subject to the Mutiny Act and Articles of War. Except during embodi-

(*a*) 15 & 16 Vict. c. 50, ss. 1–4; 17 & 18 Vict. c. 105, s. 31; c. 106, ss. 6–11 (Scotland); c. 107, ss. 5–7 (Ireland); 18 & 19 Vict. c. 100 (which made the qualifications uniform throughout the United Kingdom); 32 & 33 Vict. c. 13.

(*b*) As to appointment of officers, training and bounties to, and pay of men while not embodied, 15 & 16 Vict. c. 50; 17 & 18 Vict. cc. 13, 105, 106, 107. As to discharge of militiamen, 16 & 17 Vict. c. 13, s. 9; 17 & 18 Vict. c. 105, s. 42; c. 106, s. 61; c. 107, s. 25. As to place and time of training, 22 & 23 Vict. c. 38, s. 8. As to placing the force during training under the command of general officers, and attaching officers of regulars to the force during training, 32 & 33 Vict. c. 13, ss. 1, 2.

(*c*) 34 & 35 Vict. c. 86, s. 6, repeated in 38 & 39 Vict. c. 69, s. 21, and re-enacted by 45 & 46 Vict. c. 49, ss. 4–6 as to general militia, and 3rd sch. as to local militia.

(*d*) 38 & 39 Vict. c. 69, s. 21. This was provided by the Act of 1757, but omitted from 45 & 46 Vict. c. 49, as rank is a matter for regulation by the Sovereign.

(*e*) Army Act, ss. 50, 175, 178.

(*f*) Army Act, s. 71.

(*g*) 38 & 39 Vict. c. 69, s. 86; 44 & 45 Vict. c. 57 s. 4; re-enacted in 45 & 46 Vict. c. 49, s. 54.

ment, the men were subject only to civil fines, for drunkenness, disobedience, absence, &c. In 1761, however, the Mutiny Act was applied to the militia when out for training as well as when embodied. Men, however, who failed to appear were only liable to a fine till 1786, when they became liable in case of embodiment to be tried for desertion under the Mutiny Act (*a*).

Militia brought more under military law since 1852.

91. Since 1852 the militia has by degrees been brought more completely under military law. Thus, in 1854, men who failed to appear at the annual training were declared deserters, and made liable to a fine of 10*l.* (*b*). In 1875, militiamen during their preliminary training were made subject to the Mutiny Act by the Mutiny Act of that year, and under a subsequent Act of the same year if they failed to appear at the preliminary training were made triable as deserters (*c*). Militia officers were made at all times subject to military law by the Mutiny Act of 1877 (*d*). The old exemption of militiamen from capital punishment during annual training is omitted from the present Acts as unnecessary, because desertion and such like military offences are not capitally punishable, except on active service (*e*).

Payment of expenses of militia.

92. The expense of the militia was in 1662 divided between individuals (owners of property), counties, and parishes on the one hand, and the Crown on the other; the former provided equipments, horses, ammunition, &c., and pay for the annual training, while the Crown supplied pay in case of embodiment (*f*).

Act of 1757.

93. In 1757 a different principle was adopted, and a separate Act was passed authorising the issue from the Exchequer and application of a sum for the pay, clothing, and expenses of the militia, and this Act was continued annually till 1874. The passing of this Act, for long merely a formal matter, became entirely meaningless after the militia were placed under the command of the Crown in 1871, and it was accordingly provided in 1874 that the pay and clothing of the militia should be regulated by Royal Warrant, orders, and regulations in the same manner as the pay and clothing of the regular forces (*g*).

Storage of arms, &c., a local charge till 1871.

94. The storage of the arms, clothing, and equipments of the militia was in 1757 made a charge on the parishes; but in 1786 was transferred to the counties; and provision was then made for the permanent staff residing on the spot and taking care of the arms. After the change of system in 1871 (*h*) the counties were relieved from this, as well as other charges connected with the militia, and by Acts passed in 1872 and 1873 provision was made for the purchase of lands and the erection of barracks at the

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(*a*) 2 Geo. III, c. 20, s. 99: 26 Geo. III, c. 107, s. 98.
(*b*) 17 & 18 Vict. c. 105, s. 45; c. 106, s. 58; c. 107, s. 28.
(*c*) 38 & 39 Vict. c. 7, s. 2; 38 & 39 Vict. c. 69, s. 59.
(*d*) 40 & 41 Vict. c. 7, s. 2; see as to the present law, ch. xi, para. 51.
(*e*) At one time militia deserters might be sentenced to serve in the regular forces, 39 Geo. III, c. 106; 49 Geo. III, c. 90, s. 127, repealed in 1875; and 43 Geo. III, c. 50, s. 5, only repealed in 1882.
(*f*) Individuals were liable to advance one month's pay; and the Act provided that until this month's advance was repaid no further advance was to be required. This led to a difficulty in calling out the militia, which was removed by a temporary Act, 2 Will. & Mar. sess. 2, c. 12, re-enacted almost annually during the reigns of Will. & Mar., and Anne. Similar provisions were again made in 1715, 1 Geo. I, stat. 2, c. 14, revived in 1723, 9 Geo. I, c. 8, s. 6, and again in 1733, 7 Geo. II, c. 23, and in 1745, 19 Geo. II, c. 2. The money raised by the county was known as "trophy money."
(*g*) 37 & 38 Vict. c. 29. See also 38 & 39 Vict. c. 69, s. 86. The then existing Acts were 31 & 32 Vict. c. 76; 32 & 33 Vict. c. 66; and 36 & 37 Vict. c. 84, which had been annually continued by the Expiring Laws Continuance Act, and were to have effect as a Royal Warrant, until a new Warrant was made.
(*h*) By 34 & 35 Vict. c. 86.

Ch. IX.

public expense, and the counties were authorised to transfer their storehouses to the Crown, or to sell them (*a*).

Billeting.

95. Ever since 1757 the officers and men have been allowed during the annual training and during embodiment to be billeted like the regular forces, and the permanent staff may be billeted at all times.

Relief of families of militiamen.

96. Various enactments were made for relieving out of the poor rates families of militiamen when embodied or out for training; but this system, on the reform of the Poor Law in 1834, was abolished by the Poor Law Amendment Act of that year (*b*).

Enlistment of militiamen into the army.

97. When every parish was obliged to raise a certain number of militiamen, the discharge of a militiaman or his enlistment into the army necessarily threw on the parish the burden of providing another man. The power of discharge was therefore jealously watched, and the enlistment of a militiaman into the army was either prohibited, or very much restricted. At the same time individuals desirous to find substitutes, and parishes desirous to avoid a ballot, although forbidden to enlist men by beat of drum, competed for recruits with the recruiting officers of the regular army, and thus in time of war the bounty for recruits was raised to a very high sum (*c*).

Act of 1795.

98. In 1795 a change of policy took place, and subject to certain limitations, the enlistment of militiamen in the army was encouraged; and, in order to replace militiamen so enlisting, militia officers were authorised to enlist men by beat of drum (*d*).

Acts of 1852 and 1854.

99. Long after this, however, and even after the change of system in 1852, the old prohibition against the enlistment of militiamen in the army remained in force, although with a voluntarily enlisted militia the reason had disappeared. On the breaking out of war in 1854 prosecutions were instituted against militiamen who had enlisted in the army, and legislation was required to enable the Secretary at War to relieve from punishment the men who had so enlisted (*e*).

Act of 1875.

100. Further legislation authorised enlistment in the army; and by the Act of 1875 the enlistment of volunteer militiamen in the army was, as well as their discharge from the militia, placed entirely under the direction of the Secretary of State for War (*f*).

Acts for raising forces to meet apprehended French invasion, 1796–1812.

101. At the end of the eighteenth and beginning of the last century various Acts were passed for raising forces to resist the threatened French invasion, which were based on the liability of every man to aid in the defence of the realm, either by personal service or by contributions (*g*).

(*a*) 35 & 36 Vict. c. 68; 36 & 37 Vict. c. 68, s. 8; 36 & 37 Vict. c. 84.

(*b*) See 43 Geo. III, c. 47, which consolidated the old enactments, and was repealed by 4 & 5 Will. IV, c. 76, s. 60, and by 38 & 39 Vict. c. 69, s. 96.

(*c*) The ballot had thus a bad effect on enlistment for the army. See Clode, Mil. Forces, i, 289.

(*d*) In 1795, 35 Geo. III, c. 83. Such enlistment was also authorised by the Acts relating to the supplementary militia, 39 Geo. III, c. 106; 39 & 40 Geo. III, c. 1. The Consolidation Act of 1802 (42 Geo. III, c. 90) prohibited the enlistment, but authority to enlist men was given by a series of Acts from 1805 to 1813. 45 Geo. III, c. 31; 46 Geo. III, c. 124; 47 Geo. III. sess. 2, c. 57; 48 Geo. III, c. 64; 49 Geo. III, c. 4; 49 Geo. III, c. 53, s. 32; 51 Geo. III, cc. 20, 30; 53 Geo. III, c. 81; 54 Geo. III, cc. 1, 38.

(*e*) 17 & 18 Vict. c. 105, s. 42; c. 106, s. 61; c. 107, s. 25.

(*f*) 23 & 24 Vict. c. 94, s. 17; 38 & 39 Vict. c. 69. ss. 75, 76.

(*g*) 37 Geo. III, cc. 4. 24, and as to Scotland, cc. 5, 39. In 1797 a force of provisional cavalry was to be raised as an augmentation to the militia under 37 Geo. III, cc. 6, 23, 139; 38 Geo. III, cc. 51, 94; 39 Geo. III, c. 23. As to returns of men, provisions, &c., 38 Geo. III, c. 27; 43 Geo. III, c. 55. An army of reserve was provided by 43 Geo. III, cc. 82, 100, 123, and 44 Geo. III, c. 56; and as to Scotland, 43 Geo. III, cc. 83, 124; 44 Geo. III, c. 66; and as to Ireland, 43 Geo. III, c. 85; 44 Geo. III, c. 74; and as to the City of London, 43 Geo. III, c. 101; 44 Geo. III, c. 96; the first of which recites

Acts establishing local militia.

102. They were superseded in 1808 by Acts establishing a local militia in England and Scotland. These Acts were amended in the following years (*a*), and were finally consolidated in 1812. The general provisions of the Acts passed in that year (*b*) are still in force, though the local militia is in abeyance.

Account of local militia.

103. The local militia is in effect the old general levy, as the Acts provide for raising a force in each county by ballot, in the same manner as under the general Militia Acts, from among men between the ages of 18 and 30. The number in each county, including any effective yeomanry and volunteers in the county, was to be equal to six times the quota fixed for the regular militia of the county, but since 1871 is to consist of such number of men as may from time to time be provided by Parliament (*c*). A man when drawn in the ballot must serve for four years without any power to find a substitute, and without receiving any bounty. With some exceptions (such as men with previous service, or men with more than two children) there are no exemptions from liability to serve. Parishes may provide volunteers and pay them bounties out of the rates. The counties are liable to an annual fine of 15*l.* for each man short of the quota.

Training, command, and embodiment.

104. The force is to be annually trained, and may be called out for the suppression of riots, and preliminary training may be required. The force may be embodied in case of invasion or the appearance of an enemy on the coast, and in case of rebellion; Parliament is to meet within fourteen days after the order for embodiment (*d*). As regards command, officers, and discipline, the local militia is almost precisely in the same position as the general militia (*e*), and the force whenever called out is subject to military law. The property qualification of officers was abolished by 32 and 33 Vict. c. 13. The expenses were to be paid by the Crown, and the storage of arms, which was formerly a county charge, is now also borne by the Crown (*f*).

Not raised since 1815.

105. The force was actually raised by ballot and called out for annual training until the peace of 1815 (*g*). In 1813 parts of the local militia were authorised to volunteer for service out of their counties with the object of guarding French prisoners (*h*). After that peace the King in Council was authorised (*i*) to suspend the ballot for and enrolment of the local militia, and the force has not

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that the City, notwithstanding their exemption from the liability to provide men for military service, have offered to raise the force mentioned in the Act. A levy *en masse* was provided for by 43 Geo. III, c. 96, amended by c. 120. The first Act recites that it is expedient "to enable His Majesty more effectually to exercise his ancient "and undoubted prerogative of requiring the military service of all his liege sub-"jects in case of an invasion of the realm by a foreign enemy," extended to the City of London by 43 Geo. III, c. 125. The foregoing Acts were repealed in 1806 by 46 Geo. III, cc. 51, 63, 90, 144; and the Training Act (46 Geo. III, c. 90) was passed, which was only repealed in 1872 by the Statute Law Revision Act (35 & 36 Vict. c. 63), but was never put in force.

(*a*) 48 Geo. III, c. 111; and as to Scotland, c. 150; amended by 49 Geo. III, cc. 40, 48, 82, 129, and 50 Geo. III, c. 25. See Clode, Mil. Forces, i. 325–332.

(*b*) 52 Geo. III, c. 38; and as to Scotland, c. 68. See also the Amendment Acts, 52 Geo. III, c. 116; 53 Geo. III, cc. 28, 29, and 45 & 46 Vict. c. 49, 3rd sched.

(*c*) 34 & 35 Vict. c. 86, ss. 7, 8, 19, re-enacted by 45 & 46 Vict. c. 49, 3rd sched.

(*d*) The Act of 1870 (33 & 34 Vict. c. 68), which allowed the militia to be embodied in case of imminent national danger or great emergency, was repealed by 38 & 39 Vict. c. 69, as if it had not applied to the local militia.

(*e*) See above, para. 83, *et seq.*, and Militia Act, 1882 (45 & 46 Vict. c. 49, 3rd sched.). The Army Act applies to the local as well as to the general militia.

(*f*) It appears to have been transferred to the Crown, as in the case of the general militia, by 35 & 36 Vict. c. 68.

(*g*) Annual training is mentioned in the Annual Register, 1811, p. 32.

(*h*) 54 Geo. III, c. 19; Annual Register, 1813, p. 205.

(*i*) By 56 Geo. III, c. 38.

Ch. IX.

since been raised. Orders in Council were made annually under the Act up to the year 1832 (*a*), when they seem to have been discontinued, and the Act authorising the suspension was repealed as obsolete in 1873 (*b*).

Militia of Scotland before and under Act of 1802.

106. The early Acts above-mentioned relate only to the militia of England. The militia of Scotland was not organised by an Act of the Parliament of Great Britain until 1797, though before that time corps of Fencibles were raised and embodied (*c*). In that year an Act was passed (*d*), which as subsequently amended (*e*) provided for raising a force of militia during the war, by ballot among men between the ages of 19 and 30. In 1802 these Acts were replaced by an Act (*f*) providing for the organisation of the militia on a basis similar to that on which the militia of England was organised by the Consolidation Act passed in that year (*g*).

Militia of Ireland. First Act 1715.

107. The militia of Ireland was first organised in 1715 (*h*), when His Majesty and the Chief Governor were empowered to issue to Protestants commissions of lieutenancy and array for counties and cities, empowering them to arm and train all Protestants between the ages of 16 and 60, who were bound to appear or find substitutes ; and in case of insurrection, rebellion, or invasion to serve in any part of the Kingdom. His Majesty and the Chief Governor were empowered to commission officers and approve of deputy lieutenants, but the command of the force was vested in the lieutenants of counties. Mutiny, non-appearance, and neglect of duty were punishable by fine or imprisonment, and the force was not made subject to military law.

Amending Acts.

108. This Act was amended in 1719 (*i*), and again in 1745 (*k*) and, as so amended, was continued from time to time until 1777, when it was replaced by an Act (*l*) which seems to have contemplated the raising of men by ballot, though in point of fact it made no provision for raising men otherwise than by voluntary enlistment, and did not fix any term of service. This Act being found insufficient, was repealed and replaced in 1793 by an Act (*m*) which provided for raising a force of militia according to quotas fixed in the Act, by ballot among men between the ages of 18 and 45, to serve for four years. Governors of counties were authorised to array and train the force, and to appoint deputies, subject to the approval of the Lord Lieutenant ; and His Majesty was empowered to appoint a commandant for each county, who was authorised to appoint officers, having property qualifications, subject to the approval of the Lord Lieutenant. The force might be embodied in case of invasion, &c., and was, during training and embodiment, subject to the Mutiny Act. The raising of the force was made compulsory by clauses imposing a fine of 5*l.* a year on each county for each man deficient, and enlistment in the army was prohibited. This Act of 1793 was amended in 1795 (*n*), and again in every succeeding year till the Union of Ireland with Great Britain in 1801.

(*a*) Clode, Mil. Forces, i. 333, in which 1836 appears to be a misprint for 1832.
(*b*) By the Statute Law Revision Act, s. 73, (36 & 37 Vict. c. 91).
(*c*) See preamble to 18 Geo. III, c. 59, s. 4.
(*d*) 37 Geo. III, c. 103.
(*e*) 38 Geo. III, cc. 12, 44; 39 Geo. III, c. 62 ; 41 Geo. III. (U.K.) c. 67.
(*f*) 42 Geo. III, c. 91.
(*g*) 42 Geo. III, c. 90.
(*h*) 2 Geo. I (I), c. 9.
(*i*) 6 Geo. I (I). c. 3.
(*k*) 19 Geo. II (I), c. 9.
(*l*) 17 & 18 Geo III. (I), c. 13.
(*m*) 33 Geo. III (I), c. 22.
(*n*) 35 Geo. III 1), c. 8.

Acts after Union.

109. For some years after the Union the force continued to be raised and governed under the ante-Union Acts, as amended by several Acts passed by the Parliament of the United Kingdom (*a*), which encouraged voluntary enlistment by means of bounties to be advanced by the Treasury and repaid by the counties. Finally, all the Acts were consolidated in 1809 by an Act (*b*) which fixed the establishment of each regiment, and provided for raising the men by means of ballot, but gave power to the Lord Lieutenant to authorise the raising of men by voluntary enlistment by means of bounties advanced by the Treasury and repaid by the counties, and also to suspend the raising of any regiment. The Acts since 1852 have been noticed before.

Yeomanry and Volunteers.

Early volunteer corps.

110. It has been mentioned before that volunteers were accepted in aid of the ballot for the militia, first as individuals, and then as separate companies, but these separate companies formed, in fact, part of the militia (*c*). Besides the above, volunteer corps were raised independently of any Act; some of them were known as Fencibles, and were chiefly raised in Scotland. Enactments were passed, however, to prevent the officers vacating their seats in Parliament by the acceptance of commissions, and to regulate their rank with officers of the militia (*d*).

Acts of 1794 and 1802.

111. In 1794 an Act was passed to provide that any corps of volunteers which had been raised by officers commissioned by the King, or the lieutenant of the county, or by other persons authorised by the King, and which in case of invasion or of riot should assemble and march, should receive the same pay as the regular forces, and be subject to military discipline; such volunteers were to be exempted from liability to serve in the militia (*e*). These corps, it will be observed, were distinct from the militia. This Act expired at the peace of Amiens; but in 1802 another Act was passed authorising the raising of yeomanry and volunteer corps (*f*). The eagerness to volunteer and the energy with which military preparations were taken up throughout the country for the purpose of resisting the threatened invasion of the French under Napoleon are well known, and upwards of 400,000 men were enrolled (*g*). The men so enrolled were exempted not only from the regular militia, but also from the other forces which, as before mentioned, were organised at this period (*h*), and the allegation was made that by reason of this exemption the volunteers were a disadvantage as interfering with the efficiency of the other forces.

Act of 1804.

112. In 1804 an Act was passed in the face of considerable opposition for consolidating and amending the Acts relating to the yeomanry and volunteers, and this was the Act under which, as amended by subsequent Acts, the Yeomanry in Great Britain were raised and served down to 1901 (*i*).

(*a*) 41 Geo. III (U.K.), c. 6; 42 Geo. III, c. 109; 43 Geo. III, cc. 2, 33.
(*b*) 49 Geo. III, c. 120.
(*c*) See 18 Geo. III, c. 59; 19 Geo. III, c. 76; 34 Geo. III, c. 16.
(*d*) 18 Geo. III, c. 59; 35 Geo. III, c. 83, s. 10.
(*e*) 34 Geo. III, c. 31; 38 Geo. III, cc. 27, 51.
(*f*) 42 Geo. III, c. 66, amended by 43 Geo. III, c. 121; 44 Geo. III, c. 18.
(*g*) Stanhope's Life of Pitt, iv. 77, ch. xxxvi; Clode, Mil. Forces, i. 313, 314.
(*h*) See above, para. 101. As to the relation of these volunteers to the other forces, see Clode, Mil. Forces, i. 312.
(*i*) 44 Geo. III, c. 54, amended by 46 Geo. III, cc. 125, 140; 56 Geo. III, c. 39; 57 Geo. III, cc. 41, 44; 7 Geo. IV, c. 58; 51 & 52 Vict., c. 31, s. 2. The Act of 1804 was repealed as to volunteers in Great Britain by the Volunteer Act of 1863.

Ch. IX.

Position of yeomanry up to 1901.

112A. Before the Act of 1901, mentioned in the next paragraph, came into operation, the Yeomanry of Great Britain were in fact volunteer cavalry, and consisted of corps whose services had been offered to and accepted by the Sovereign, whether under the law existing before the Act of 1804 (*a*), or subsequently under the powers conferred by that Act.

The number of the Yeomanry was unlimited and enlistment voluntary. They did not rank as effective unless trained for a certain number of days in each year. Originally, under the Act of 1804, they were liable in case of invasion, or the appearance of any enemy in force on the coast of Great Britain to assemble for military service in any part of Great Britain; but under the National Defence Act, 1888 (*b*), they were made liable to be called out for actual military service in any part of Great Britain whenever an order embodying the Militia was in force, and the existing machinery for embodying and disembodying the Militia was applied to the Yeomanry. They were also able, under certain circumstances, to assemble voluntarily for improvement in military exercise, or to act for the suppression of riots (*c*). Under an Act of 1884 (*d*), orders and regulations could be made as to the pay and pensions of the Yeomanry. Unlike the Volunteers, the Yeomanry were, even before 1901, subject to military law when being trained or exercised alone.

The Act of 1804 did not apply to Ireland, but provision was made for the formation of a Yeomanry Corps in that country by an Act of 1802 (*e*). This act differed from the English Act in providing for a Yeomanry on a different footing to the Yeomanry of Great Britain, and consisting of troops voluntarily enrolled for the protection of property and the preservation of peace in their locality, and not liable to be called out compulsorily.

The position of the Yeomanry under the old system, as regards subjection to military law, was as follows: If a corps of Yeomanry was called out on actual military service, or was being trained or exercised, whether it had been called out or assembled voluntarily, and whether it was serving alone or with any portion of the regular forces or of the Militia when subject to military law, every member of that corps was subject to military law. Individual members of a corps of Yeomanry were also subject to military law when they were attached to or acting with any regular forces, or when they were serving in aid of the civil power (*f*).

The Act of 1804 has not been repealed, and, subject to the provisions of the Act now to be mentioned, still applies to the Yeomanry.

Present position of yeomanry.

112B. But now, under an Act of 1901 (*g*), the previous character of the Yeomanry as a body of volunteer cavalry has been radically changed, and the position of members of the Yeomanry has been in the main assimilated to that of members of the general Militia. The Act of 1901 applies only to members of the Yeomanry receiving commissions or enlisting after the 16th August, 1901; and in order to quiet certain doubts which had arisen, an Act of the following year, expressly applied to the Yeomanry sections three and four of the Militia Act, 1882, relating to maintenance and government (*h*). These two Acts apply to Ireland equally with the rest of the United

(*a*) 44 Geo. III, c. 54, s. 3.
(*b*) 51 & 52 Vict., c. 31. The Act contained a saving for existing yeomen.
(*c*) 44 Geo. III, c. 54, ss. 5, 22, 23 & 46; 56 Geo. III, c. 39.
(*d*) 47 & 48 Vict. c. 55, s. 2.
(*e*) 42 Geo. III, c. 68.
(*f*) Army Act, s. 176 (7); 44 Geo. III, c. 54, ss. 22, 23.
(*g*) 1 Edw. VII, c. 14; see p. 653 below.
(*h*) 2 Edw. VII, c. 39; see p. 653 below.

Kingdom, with the result that a force of Yeomanry can be raised in Ireland on the same footing as that in Great Britain; and two regiments of Yeomanry have already been raised in Ireland.

The power of the Crown to raise Yeomanry does not appear to be subject to any restriction as to numbers.

Revival of volunteers in 1859.

113. After the peace of 1814 the foot volunteers fell almost entirely into abeyance; but in 1859, in consequence of a panic respecting the hostile tone of the French army and government and the defenceless state of the country, they were revived, chiefly as rifle volunteers, but partly as light horse, artillery, and engineers. The old Act was soon found unsuitable for the organisation of the new force, and was replaced by an Act of 1863, which was again amended in 1869, 1881, 1895, 1897 and 1900 (*a*).

Billeting.

Billeting.

114. Before concluding this summary, some notice must be taken of the practice of billeting, which has at times been of great importance in English history.

Billeting in early times.

115. In early times troops were quartered under an order from the king, or some officer authorised by him, such as the High Harbinger, directed to the civil magistrate of the district, requiring him to provide quarters and provisions. This right to quarter was probably connected with the right of purveyance, and as the need of quartering only arose in time of war, the exercise of the right could not be complained of by those who were liable to serve in person or provide soldiers, arms, and provisions (*b*).

Abuse of the practice, and declaration of illegality thereof by Petition of Right.

116. But, like the right of purveyance, the right to quarter was no doubt abused and led to oppression; and when it came to be enforced to provide quarters for soldiers returning from the wars and without employment, or (as in the reign of Charles I) to punish towns which had displeased the Court by returning unacceptable candidates to Parliament or otherwise (*c*), the abuse became intolerable, and billeting was consequently declared to be illegal by the Petition of Right (*d*).

Billeting under Charles II.

117. The practice nevertheless continued, though not without remonstrance, during the reign of Charles II (*e*), until 1679, when it was again declared to be illegal by an Act in which Parliament provided money for disbanding the troops, and, on condition of the disbandment, granted an indemnity for past illegal quarterings. This declaration of illegality, as well as that in the Petition of Right, is still in force (*f*).

Billeting under James II.

118. James II, however, again violated the law, and issued orders for billeting (*g*), which gave rise to one of the complaints against him mentioned in the Bill of Rights (*h*), after which the practice of billeting, except under statutory authority, was discontinued. The

(*a*) These Acts are given below in Part III. The 1st Middlesex and 1st Devonshire rifle volunteers existed some years before 1859. The Honourable Artillery Company also never ceased to exist. The Act of 1863 is 26 & 27 Vict. c. 65; of 1869, 32 & 33 Vict. c. 81; of 1881, 44 & 45 Vict. c. 57; of 1895, 58 & 59 Vict. c. 23; of 1897, 60 & 61 Vict. c. 47; of 1900, 63 & 64 Vict. c. 39.

(*b*) Scott's Brit. Army, ii. 451, and Commissions in Rymer. The word "billet" is a diminution of "bill," a note, and is not derived from "bil," Latin billus, a stick used by slaves, nor from its derivative "billet," a wedge of gold or a log of wood, the size of which was fixed by the Acts 27 Edw. III, stat. 2, c. 14, and 43 Eliz. c. 14, to be 3 ft. 4 in. by 7½ in. (Wedgwood's Etym. Dict). The French word is derived from the English (Littré). The word in relation to the quartering of troops is used by Shakespeare, Othello, Act ii, Sc. 3.

(*c*) See Forster's Life of Sir John Eliot, ii. 57, 96, 378, note.

(*d*) 3 Cha. I, c. 1.

(*e*) Clode, Mil. Forces, i. 80, 81.

(*f*) 31 Cha. II, c. I.

(*g*) Clode, Mil. Forces, i. 57, 61, and Appendix xii.

(*h*) 1 Will. & Mar. sess. 2, c. 2.

Ch. IX.

prevalence of the practice of billeting in the reigns of Charles II and James II arose from the necessity of providing quarters for the troops they maintained in time of peace; and the complaints of the illegality of the practice were intensified by those troops being maintained without the consent of Parliament.

Billeting first authorised by Parliament in Mutiny Act, 1689.

119. When a standing army was, as before mentioned, authorised by Parliament after the Revolution, it became necessary to make legal provision for the accommodation of the army, as the barrack accommodation was insufficient, and accordingly, in the year 1689, the second Mutiny Act (*a*) authorised billeting. That Act, while affirming the illegality of billeting, as declared by the Petition of Right and the Act of Charles II, recited that there was "occasion for the marching of many regiments, troops, and companies in several parts of this kingdom towards the sea-coasts and otherwise," and empowered the constables and other chief officers and magistrates of cities, boroughs, towns, and villages, and other places, and no others, to quarter and billet officers and soldiers in "inns, livery stables, alehouses, victualling houses, and all houses selling brandy, strong waters, cyder, or metheglin, by retaile, to be dranke in their houses, and noe other, and in noe private houses whatsoever."

Billeting under Army Act.

120. The power thus conferred was subsequently re-enacted in every Mutiny Act, until it was embodied in Part III of the Army Discipline and Regulation Act, 1879, now replaced by Part III of the Army Act. As the Army Act is only in operation by virtue of an Act passed annually, billeting continues illegal except to the extent expressly allowed by the Army Act, and so long only as that Act is kept in operation (*b*). The Annual Army Act also specifies the prices to be paid for billeting.

Billeting illegal except so far as expressly authorised.

121. The recital above quoted indicated that billeting was to be only of troops on the march, and the doubt which hence arose as to the power to billet the guards in Westminster led to the insertion in the Mutiny Act of 1707 of a special enactment, authorising them to be so billeted. This enactment was annually re-enacted until 1879 (*c*). In other parts of the country, however, troops were frequently billeted after they had arrived at their destination, under colour of a presumption that they were still on the march, and that the route authorising them to be billeted was still in force.

Billeting in private houses illegal.

122. Since the time when billeting was first authorised by the Mutiny Act, no alteration in principle, and but little in detail, has been made in the law as regards England. That law has never allowed billeting in private houses, though before the Revolution both Charles II and James II issued orders for such billeting (*d*). In Scotland and Ireland, on the other hand, such billeting was allowed until quite recently; indeed, it was only abolished in Ireland in the year 1879.

Billeting in Scotland.

123. As regards Scotland, billeting was regulated by a number of Acts passed before the Union with England, which, while prohibiting free quartering, contained no definition of the houses liable to billets, so that private houses were not exempt. At the time of the Union, in 1708, the Mutiny Act was extended to Scotland, and a provision was inserted (*e*) allowing officers and soldiers

(*a*) 1 Will. & Mar. sess. 2, c. 4.
(*b*) The Acts prohibiting billeting were suspended in express terms by the Mutiny Acts; they are now suspended in general terms by s. 102 of the Army Act.
(*c*) Clode, Mil. Forces, i. 232, 238.
(*d*) Clode, Mil. Forces, i. 57, 61, 81, and App. xii.
(*e*) 7 Ann. c. 4, s. 22.

to be quartered in such and the like places and houses as they might have been quartered in by the laws in force at the time of the Union.

This provision was annually re-enacted until 1857, when the provisions as to billeting in Scotland were assimilated to those in England (*a*).

Billeting in Ireland.

124. As regards Ireland, billeting was regulated by Acts passed before the Union with Great Britain, which allowed billeting in public houses (described in much the same terms as in England), and "where there shall not be found sufficient room in such houses, then in such manner as has heretofore been customary." After the Union the law remained the same, the provisions of the Irish Acts being at first continued by, and afterwards re-enacted in, the Mutiny Act until the year 1879, when the words allowing billeting in private houses were omitted from the Army Discipline and Regulation Act, and billeting was placed on the same footing throughout the United Kingdom (*b*).

Necessity of billeting while barrack accommodation insufficient.

125. Although billeting was oppressive and generally unpopular as well as detrimental to the soldier (*c*), yet down to the end of the eighteenth century the opponents of a standing army objected to the building of barracks on the ground that it facilitated the maintenance of the army to the danger of the constitution and to the oppression of the people (*d*), and so long as these objections prevailed, billeting was a necessity. In 1792, however, steps were taken for providing sufficient accommodation for the troops (*e*), and during the nineteenth century barracks were gradually built, so that billeting is now hardly ever resorted to for the regular forces, except when actually moving, and the introduction of railways has greatly diminished its necessity even on those occasions.

Checks on abuse of practice.

126. A check has always existed on the arbitrary exercise of the power of billeting, the power having been entrusted to civil authorities, namely, the constable in the first instance, or in his default the justices; and these authorities have been held liable to pay damages to persons on whom they billet soldiers improperly (*f*).

Routes, authority for billeting.

127. Moreover, it has always been assumed that troops can only be moved by authority of a route signed on behalf of the Crown (*g*). A route is an order of the Crown directing some military authority to move troops as considered necessary and requiring the civil authorities to assist in providing quarters and impressing carriages. These routes have always been signed by some civil officer, and it has been the practice, which has now received statutory authority (*h*).

(*a*) 20 Vict. c. 13.

(*b*) Mr. W. L. Selfe, of Lincoln's Inn (now Judge Selfe), furnished details of the several changes in the billeting law, the most important of which, as regards England, will be found in the Mutiny Acts for 1701, 1702, 1707, 1712, 1715, 1757, 1763, 1809, 1826, 1829, 1858. See also *Parker* v. *Flint*, 12 Mod. Rep., 255 (S. C. sub nomine *Parkhurst* v. *Foster*), 1 Lord Raymond, 479.

As regards Scotland, billeting was regulated by Acts passed in 1645, 1648, 1647, 1649, 1678, 1689 (Claim of Right), 1693, c. 2, 1698, c. 9, 1718, 1844, and 1857.

As regards Ireland, billeting was regulated by Acts passed in 1707, 1717, 1779, 1782, 1801, 1813, and 1829.

(*c*) See many details as to the difficulties which arose as to billeting in Clode, Mil. Forces, i. chap. xi.

(*d*) Clode, Mil. Forces, i. 221, 242.

(*e*) Under a barrack establishment set up by the military authorities; the duties were, however, in a few years transferred to the Board of Ordnance. Clode, Mil. Forces, i. chap. xii.

(*f*) This was decided in 1697, in the case of *Parker* v. *Flint*: note (*b*) *supra*.

(*g*) Clode, Mil. Forces, i. 219. It does not quite appear whether the inability to move troops without a route was in consequence of the necessity of obtaining by means of the route carriages and billets, or of the route being a necessary authority for military reasons.

(*h*) Army Act, s. 103.

Ch. IX.

for constables and justices to billet only on the production of such routes. Formerly the routes were signed from time to time, as they were wanted, by the Secretary at War, but in 1857 (soon after the creation of the office of Secretary of State for War) they were signed by the Secretary of State in blank, and issued to the military authorities to be used as required (*a*). The present practice is to have printed copies of the various routes (general, district, regimental, or deserter) signed in blank in lithograph by the Secretary of State in the name of the King. The details of the movement of troops are filled in by the military authority issuing the route, which is signed by an officer authorised to do so, if a general route, on behalf of the Quartermaster-General, and if a district route, on behalf of the general officer commanding.

Billeting the militia.

128. Ever since 1757 the Militia Acts have authorised the militia when out for training, and when embodied, to be billeted, and this has been done without a route under an order from the lieutenant of the county, and since 1871 from the commanding officer (*b*).

Impressment of Carriages.

Prerogative right of purveyance.

129. Until the Restoration, carriages and horses could be obtained for the movement of the troops under the Sovereign's prerogative of purveyance. This prerogative was abolished in 1660 (*c*) in consequence of the great oppression caused by it, but in 1662 a power was given temporarily to impress carriages and horses for the use of the navy and the ordnance (*d*).

Impressment under the Mutiny Act.

130. The army in general was omitted, perhaps on purpose, from this Act, but in 1692 a section was added to the Mutiny Act (*e*) authorising justices when required by an order from the Crown to direct the constables to provide carriages for the use of the army when on the march within the kingdom, and specifying the maximum distance to be travelled, and the price to be paid. This section was intended to provide for the impressment of carriages to convey arms and baggage only (*f*), and contained restrictions similar to those now in force prohibiting soldiers (other than sick or wounded) from riding in the carriages, and forbidding the impressment of saddle horses. In 1799 a section was added (*g*) enabling the Crown in case of emergency to require the justices to provide carriages, saddle horses, and vessels for the conveyance of persons as well as baggage. The two sections were annually repeated in the Mutiny Act, with no alteration in principle, and very little in detail, down to the year 1879, when they were embodied in Part III of the Army Discipline and Regulation Act, which has been replaced by the Army Act.

(*a*) Clode, Mil. Forces, i. 219.

(*b*) Clode, Mil. Forces, i. 42, and the various Militia Acts. The enactment now in force is s. 181 of the Army Act, which applies to yeomanry and volunteers as well as to militia.

(*c*) By 12 Cha. II, c. 24, s. 11.

(*d*) 14 Cha. II, c. 20, which recited the repeal of the right of purveyance by 12 Cha. II, c. 24. The Act expired but was revived for seven years by 1 Ja. II, c. 11, was again continued by 4 Will. & Mar. c. 24, and again by 11 Will. III, c. 13, but not subsequently, and was repealed by the Statute Law Revision Act, 1863. The requisition was to be made by warrant from the Lord High Admiral or two Commissioners of the Navy or from the Master or Lieutenant of the Ordnance, directed to two justices of the peace. The maximum distance to be travelled and the rate of remuneration were fixed by the Act.

(*e*) 4 Will. & Mar. c. 13, s. 27.

(*f*) See 7 Ann. c. 4, s. 35.

(*g*) 39 Geo. III, c. 20, s. 46.

Scotland and Ireland.

131. Impressment of carriages in Scotland was long regulated by Acts passed before the Union with England, which, after that event, were annually kept in force by a provision in the Mutiny Act till 1857, when the provisions applying to England were extended to Scotland (*a*). In Ireland also impressment of carriages was regulated until 1813 by Acts passed before the Union, and kept in force after that event by a provision in the Mutiny Act. In that year (*b*) the provisions of the Irish Acts were transferred into the Mutiny Act, and consolidated as far as possible with the provisions applicable to England, but many differences in detail remained, some of which are still to be found in the third schedule to the Army Act (*c*).

Orders authorising impressment.

132. The power of impressment, like that of billeting, is exercised only by the civil authority, that is to say, the justices and constables. In the case of impressment for ordinary purposes these authorities could at first act only under an order from the Crown, which necessarily was countersigned by the Secretary at War or some Minister; but after 1708 (*d*) orders were allowed to be signed by the General of the Forces, while they might also be signed by the Master-General or Lieutenant-General of the Ordnance from 1720 (*e*) to 1855, when the Board of Ordnance was abolished; and since 1807 (*f*) they have been allowed to be signed by any person duly authorised in that behalf. In practice, however, the power of impressment has been exercised only in pursuance of a route signed as in the case of a route authorising billeting; and this practice has now received statutory sanction in the Army Act (s. 112). Impressment in case of emergency was authorised by the Mutiny Act only on an order signified by the Secretary at War, or after the transfer of his duties, by the Secretary of State for War, or in Ireland by the Chief Secretary or Under Secretary, or the first clerk in the Military Department, and the law in this respect remains unchanged (*g*), with the exception that such orders can no longer be signified in Ireland by any other official than the Chief or Under Secretary. The Act imposes penalties for disobedience to a requisition, but does not authorise the seizure of the carriages, &c., unless an order for the embodiment of the militia is in force; in which case, the requisition may extend to purchase as well as hire, and a person refusing or neglecting to furnish carriages, &c., as ordered, is liable to have them seized (s. 115 (7) (8)). If, in any other case, they were seized, the owner would have a remedy by action for damages.

Impressment of carriages for the militia.

133. The Militia Acts have made provision for the impressment of carriages for the militia since 1757, when embodied, and since 1786, when in training. At present the force when embodied, or

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(*a*) 20 Vict. c. 13.
(*b*) 53 Geo. III. c. 17.
(*c*) Mr. W. L. Selfe furnished the following references to the principal changes in the law as to impressment of carriages:—
1. As regards England 7 Ann. c. 4, s. 37; 39 Geo. III, c. 20, s. 46; 39 & 40 Geo. III, c. 27, s. 45; 56 Geo. III, c. 10, s. 73; 10 Geo. IV, c. 6.
2. As regards Scotland. Impressment was regulated before the Union by an Act of the Parliament of Scotland, 1693, c. 11. For subsequent changes see 58 Geo. III, c. 11, s. 87; 10 Geo. IV, c. 6; 20 Vict. c. 13.
3. As regards Ireland, see Acts of Parliament of Ireland, 6 Ann c. 14; 3 Geo. II, c. 10; 15 Geo. II, c. 6; 7 Geo. III, c. 14; 19 & 20 Geo. III, c. 16; 21 & 22 Geo. III, c. 43; and 41 Geo. III (U.K.), c. 11, s. 55; 53 Geo. III, c. 17; 7 Geo. IV. c. 10, s. 83.
(*d*) 7 Ann. c. 4.
(*e*) 6 Geo. I, c. 3.
(*f*) 47 Geo. III, sess. 1, c. 32.
(*g*) Army Act, s. 115.

Ch. IX.

out for training, is subject to military law, and therefore with regard to impressment of carriages is in the same position as the regular army (*a*).

Exemptions from tolls.

134. The subject of exemption from tolls is nearly connected with that of impressment of carriages. The exemption of carriages and vessels employed under requisitions of emergency was introduced in 1799 (*b*), when impressment under such requisitions was first allowed. The general exemptions now conferred by s. 143 of the Army Act were introduced into the Mutiny Act in 1803 (*c*), and 1807 (*d*). The clause as to payment of ferries in Scotland dates from 1721 (*e*). Exemptions from turnpike tolls in England are also conferred by the General Turnpike Act of 1822 (*f*), and by various local Acts. The provisions were extended to the Army Reserve in 1867 (*g*).

Conveyance of Troops by Railway.

Conveyance of troops by railway.

135. Shortly after the introduction of railways, provision was made with respect to the conveyance of troops by railroad. The first provision was made in 1842 (*h*) and required the directors of a railway company to permit, on the production of a route signed by the proper authorities, the conveyance of officers and soldiers of the army, marines, and militia, with their baggage, stores, arms, and ammunition, at the usual hours of starting, at such prices, or on such conditions as might be contracted for between the Secretary at War and the railway company. This enactment was strengthened in 1844 (*i*), when the companies were required to provide conveyance at fares not exceeding those mentioned in the Act, and a maximum of fares was also prescribed for the conveyance of public baggage, stores, ammunition (with an exception for gunpowder and explosives), and necessaries. These provisions were extended to the Army Reserve in 1867 (*g*), and were re-enacted in 1883 (*k*) as regards the regular, reserve, and auxiliary forces as well as for naval forces. The Act of 1883 reduces the maximum fares and requires the provision of such description of carriages as are specified in the route, but provides that if the company loses the benefit conferred by the other provisions of the Act with respect to the exemption from passenger duty, they are to convey the forces and baggage on the same terms as if the Act had not passed.

Power to take possession of railways in case of emergency.

136. In 1871 it was enacted that when Her Majesty by Order in Council declared that an emergency had arisen in which it was expedient for the public service that the Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State might empower any person to take possession of any railroad, and of the plant belonging thereto, and use the

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(*a*) 30 Geo. II, c. 25; 26 Geo. III, c. 107. The enactment now in force is s. 181 of the Army Act, which applies to yeomanry and volunteers, as well as to militia.
(*b*) 39 Geo. III, c. 20, s. 46.
(*c*) 43 Geo. III, c. 20, s. 55.
(*d*) 47 Geo. III, sess. 1, c. 32, s. 60.
(*e*) 7 Geo. I, c. 6.
(*f*) 3 Geo. IV, c. 126, s. 32.
(*g*) 30 & 31 Vict. c. 110, s. 16; re-enacted by 45 & 46 Vict. c. 48, s. 23.
(*h*) 5 & 6 Vict. c. 55, s. 20.
(*i*) 7 & 8 Vict. c. 85, s. 12.
(*k*) 46 & 47 Vict. c. 34, s. 6 (see p. 615 *infra*.).

same for Her Majesty's service in such manner as the Secretary of State might direct. Full compensation must be paid to the persons whose railroad is taken possession of (*a*). The Secretary of State is, by the National Defence Act, 1888, authorised to claim precedence for traffic for military purposes over all railways whilst an order for the embodiment of the militia is in force (*b*). This Act, as well as the Act of 1871, extends also to tramways.

(*a*) 34 & 35 Vict. c. 86, s. 16.
(*b*) 51 & 52 Vict. c. 31, s. 4. See below, Part III.

CHAPTER X.

ENLISTMENT.

Object of chapter.

1. A summary of the history of enlistment down to the year 1870 has been given in Chapter IX : it is proposed in this chapter to sketch the system in operation under existing Acts, and under the Recruiting Regulations, which give general instructions as to the appointment and duties of recruiting agents, the qualification of recruits, the mode of recruiting, and other matters.

Term of original enlistment.

2. The provisions of the Army Enlistment Act, 1870, are re-enacted with slight modifications in the Army Act, so that the latter only need be noticed. A recruit is not to engage for more than 12 years, and may engage to serve the whole time with the colours, or part of the time with the colours and part in the Army Reserve (*a*). Enlistment for a term less than 12 years would, however, be legal, and any part of such term might be for service in the reserve (*b*).

Change of conditions of service.

3. A Secretary of State, however, may allow a soldier, if he wishes, to go into the reserve at once, or to extend his army service (*i.e.*, service with the colours) for any time up to the whole term of his original enlistment, or to extend the term of his original enlistment up to 12 years or any shorter period (*b*).

Re-engagement.

4. The old term of 21 years is still retained ; as, subject to any regulations made by the Secretary of State, a soldier whilst serving with the colours may, after the expiration of 9 years from the date of his original enlistment, with the approval of the competent military authority (*c*), re-engage to serve for such a further period of army service as will make up a total of 21 years' continuous service (*d*).

Continuance in service after 21 years.

5. Subject also to such regulations, a soldier who so re-engages may, at the end of the 21 years, with the approval of the competent military authority, continue to serve, with a right to his discharge 3 months after he claims it (*e*).

Regulations as to extension, re-engagement, &c.

6. Efficient soldiers, of good character, if fit for service at home and abroad are allowed under certain conditions to extend their service so as to complete with the colours, either 7 (or, in the case of men of the Royal Garrison Artillery 8 and of other Artillery 6) years or 12 years with the colours ; the extension must be approved by the commanding officer (*f*).

The present regulations, however, restrict the re-engagement and continuance of service, as private soldiers cannot re-engage before completion of 11 years' service, and then only if thoroughly efficient to the satisfaction of the officer commanding ; and are only allowed

(*a*) Under the Reserve Forces Act, 1882.
(*b*) Army Act, ss. 76-78.
(*c*) For definition of the competent military authority, see Army Act, ss. 101 (1), 190 (32), and Rule 128 ; see also K.R., para. 264.
(*d*) Army Act, s. 84. As to the conditions under which approval is authorised to be given, see K.R., paras. 264 to 269.
(*e*) Army Act, s. 85.
(*f*) K.R., para. 262.

in special cases, with the approval of the officer commanding, to continue their service beyond 21 years (*a*).

Regulations as to non-commissioned officers.

7. Under the same regulations, non-commissioned officers, if fit for service at home and abroad, are allowed, under certain conditions, and with the approval of the commanding officer, to extend their army service, so as to complete either 6, 7, 8, or 12 years with the colours. Warrant officers and staff-sergeants and sergeants, after completing 9 years' service, and schoolmasters, after completing 11 years' service, have the right to re-engage, subject only to the veto of the General Officer Commanding-in-Chief. Other non-commissioned officers are in the same position as regards re-engagement as private soldiers.

Non-commissioned officers may, with the approval of the commanding officer (who before approving must, with a few exceptions, obtain the consent of some superior authority), continue their service after 21 years, but have not the right to do so (*b*).

Power in certain circumstances to detain soldier after expiration of his term.

8. A soldier is liable to be detained in service for 12 months beyond the time at which he would otherwise be transferred to the reserve, or discharged, if a state of war exists, or if he is beyond the seas, or if the reserves are called out. A soldier who would otherwise be discharged may also agree with the competent military authority, while a state of war exists, to continue as a soldier during the war, or until the end of 3 months after he claims his discharge (*c*). The power of the Crown to discharge a soldier is noticed below.

In case of imminent national danger or great emergency, when the reserves can be called out for permanent service by the King's proclamation, a like proclamation can require men who would otherwise be transferred to the reserve to continue in army service: these men are then in the same position as if they had been transferred to the reserve and called out on permanent service (*d*).

Forfeiture of service under former Acts.

9. The Acts of 1847 and 1867 and 1870 adopted, in reckoning the years of a soldier's service, the principle of omitting those periods during which he had not given the service which he had agreed upon enlistment to give, *e.g.*, by having been in prison, or by reason of desertion, or absence without leave. After 1870, the effect of applying this principle to men liable under their enlistment to enter the reserve, was to protract the time before a soldier's entry into the reserve, but not the term of his liability to service in the reserve. It kept with the colours inferior men whose places might otherwise have been filled by good recruits.

Provisions of Army Act as to forfeiture of service.

10. The Army Act, therefore, abandons this principle, and does not, because a man is a bad soldier and constantly under sentence, require him to serve longer, but allows him to be discharged or sent into the reserve at the usual time. On the other hand, it provides that a soldier guilty of desertion or fraudulent enlistment shall forfeit, not only the time of his absence, but all his service prior to his conviction, and be liable to serve as if he had been attested at the date of his conviction, or of the order dispensing with his trial in the case of confession; the term of any imprisonment or detention to which he is sentenced will reckon as part of his service after that date. The Secretary of State, however, has power to restore all or any part of the service forfeited (*e*).

(*a*) K.R., paras. 262, 264, and 270–272.

(*b*) See Army Act, s. 86; K.R., paras. 262, 264, 270, 272, to which reference must be made for details.

(*c*) Army Act, ss. 87, 88, also s. 77.

(*d*) Army Act, s. 88. See Reserve Forces Act, 1882, ss. 12, 14.

(*e*) Army Act, ss. 73, 79. See further as to restoration of Service, K.R., para. 273.

Ch. X.

Effect of provisions.

11. This forfeiture, coupled with the provision as to the liability of a soldier convicted of the above offences to general service, will enable a man who has committed them to be sent to serve abroad, or in some other sphere where, by reason of greater activity or otherwise, he will be removed from the class of temptation under which he may have committed the offence. For, however serious the above offences are in a military sense, they are often committed, not from any want of moral character or any reluctance to serve, but from some discontent, or from association with bad companions, or from some sudden or special temptation inducing the man to absent himself.

Enlistment for general service and appointment to corps.

12. A man may, since 1870, under the Recruiting Regulations, be engaged for service in any particular corps, but otherwise he is enlisted for general service or general service (infantry), or general service (cavalry), and, if enlisted for general service, or general service (infantry), or general service (cavalry), he is, under the present law, to be appointed, as soon as practicable, to some corps, or some corps of those arms of the service, but may be transferred, within three months of his attestation, to any other corps of the same arm or branch of the service (*a*).

Power to transfer under former Acts.

13. The power to transfer used formerly to be exercised in such a manner as to make it oppressive and much dreaded by the soldier. The Mutiny Act in 1765 expressly authorised courts-martial to sentence deserters to be transferred for service in foreign parts; but subsequently transfer, except by consent or as a punishment, was abandoned.

Provisions of Army Act as to transfer.

14. At present, when once a soldier is appointed to a corps for which he enlisted (or, if he enlisted for general service, has served for three months in a corps to which he has been appointed), he may make it his home so long as he serves with the colours, provided he conducts himself fairly well, and is qualified to serve in the place in which his corps is ordered to serve. He may be transferred, however, to another corps with his own consent, or compulsorily. The compulsory transfer may be either—(1) for the purpose of retaining him in a place when his corps removes; or (2) as a punishment.

By consent.

15. It may happen that a man who is appointed to the cavalry may, with advantage, be transferred to the infantry, if he is unable to learn to ride; while a man may be transferred to another corps for the purpose of serving with a brother. These cases would be with his consent.

From regiment ordered abroad from home, or *vice versâ*.

16. When a soldier has been invalided from abroad, or his battalion is ordered abroad, and he is unfit to serve abroad, or will, within two years, go into the reserve, or be discharged, he can, if he does not go into the reserve at once, be transferred compulsorily to a corps of the same branch of the service in the United Kingdom or to the reserve. Similarly, when a regiment or battalion abroad is ordered home or to another station, a soldier who has (in addition to his reserve service) two years' army service to run under his original enlistment, may, for the purpose of serving abroad the residue of his army service, be transferred compulsorily to another corps of the same branch.

As a punishment.

17. A soldier who has been guilty of desertion or fraudulent enlistment, or has been sentenced by a court-martial to not less than three months' detention, may have his punishment wholly or partly commuted into a liability to general service, and he may then be transferred from time to time to any corps. This power may well be exercised in cases where a soldier gets into trouble in the

(*a*) Army Act, s. 83 (1).

United Kingdom and there is a prospect of his being converted into a good soldier by being sent abroad (*a*). A soldier committed as a deserter by a civil magistrate in any part of His Majesty's dominions may be transferred compulsorily to a corps near the place where he is committed, or to any other corps if the competent military authority direct, but this power need not often be exercised (*b*).

Conditions of enlistment not varied without consent of soldier. 30 & 31 Vict., c. 34. 33 & 34 Vict., c. 67.

18. The enlistment of the soldier is a species of contract between the Sovereign and the soldier, and under the ordinary principles of law cannot be altered without the consent of both parties. The result is that the conditions laid down in the Act under which a man was enlisted, cannot be varied without his consent. A soldier, however, who has enlisted under one Act, and re-engaged under another, has thereby consented to place himself under the Act under which he re-engaged. So also has a soldier who has given notice to continue his service, though until the passing of the Army Act he had been assumed to remain under the Act to which he was subject at the time when he gave the notice (*c*).

Application of Army Act to soldiers enlisted under former Acts.

19. The above principle was recognised in 1879, as the Army Discipline and Regulation (Commencement) Act of that year provided that the Army Discipline and Regulation Act, 1879, should not affect the position of a soldier, without his consent, as regards the term of his service, or his liability to forfeit his service or to be transferred to another corps.

Further observations on application of Army Act.

20. The liability to general service on conviction for desertion or fraudulent enlistment was extended to old soldiers, because it is a mitigation of punishment for an offence; but the power to transfer soldiers given by sub-sections (4) and (5) of section 83 did not apply to any soldier who enlisted between the 19th of June, 1867, and the 9th of August, 1870, if he had not re-engaged. A soldier who re-engaged after the commencement of the Army Discipline and Regulation Act, 1879, became, on the principles before mentioned, subject to the whole of Part II of the Army Act; and a soldier who extended his army service, or who gave notice to continue his service after the commencement of the Army Act, is also deemed to have consented to the application to him of the whole of Part II of that Act.

Attestation before civil authority required since 1694.

21. Since 1694 (*d*) a soldier has been required to be attested before some civil authority as a mode of protecting him against being entrapped, without understanding the nature of it, into a contract, which, even though not a contract for life, is one of a very serious nature. Attestation was also adopted as a protection from impressment (*e*). The practice which exists in many parts of the country of concluding a bargain by giving some earnest of it, was adopted in the case of enlistment by the giving of the shilling, and formerly the acceptance of the shilling rendered the man for some purposes a soldier (*f*).

(*a*) See above, para. 11.

(*b*) As to transfer generally, see Army Act, s. 83, K.R., paras. 323–334; and as to competent military authority, Army Act, s. 101 (1), and Rule 128.

(*c*) The effect of these provisions is to bring all soldiers now serving under the Act of 1881, as any soldier enlisted under a previous Act and now serving must have either re-engaged or continued his service under the Act of 1881.

(*d*) 5 & 6 Will. & Mar., c. 15, s. 2, quoted in Clode, Mil. Forces, ii. p. 7.

(*e*) The Secretary at War used to discharge soldiers improperly enlisted. See Clode, Mil. Forces, ii. p. 8. The King's Bench discharged soldiers improperly impressed, *R* v. *Kessel*, Burrow's Rep. 637. See Clode, Mil. Forces, ii. p. 587.

(*f*) The acceptance of the shilling was treated as an agreement by the man to enlist, and either to complete his enlistment by attestation before a justice, or, in default, to pay smart money, which latterly amounted to 20*s*. Enactments were made for giving him notice of what he was about to agree to, and for the lapse

Ch. X.

Provisions of Army Act as to attestation.

22. Under the Army Act, the acceptance of the shilling has no such effect. A man offering to enlist receives a notice informing him of the general conditions of service in the army, and of the requirements of attestation, and directing his appearance before a justice (*a*). If he fails to appear he has merely broken his bargain; he cannot be arrested as a criminal; and on appearing before the justice he may object to enlist, and if so cannot be required to pay any smart money. If he appears before the justice and takes the oath, he becomes an attested soldier, but he will still be able to procure his discharge within three months by paying a sum which is not to exceed, and is at present fixed at, ten pounds. The attestation consists in appearing before the justice, answering certain questions, which are recorded, and making and signing a declaration as to the truth of those answers, and taking the oath of allegiance (*b*). Thereupon he becomes for all purposes a soldier, and any invalidity in the attestation can only be taken advantage of within three months afterwards. Any immaterial error in the attestation paper can be amended at any subsequent time by a justice (*c*). The disqualification of an officer while subject to military law (except a militia officer when not embodied) to act as a justice for the purpose of attesting recruits for the regular forces, was removed in 1883; and officers are now empowered so to act, if authorised by the regulations of a Secretary of State. The persons who in India, the colonies, and foreign countries have authority to attest recruits, are enumerated in s. 94 of the Army Act.

Evidence of attestation.

23. The attestation paper is signed in duplicate, so that the original may be kept at home and the duplicate follow the man wherever serving (*d*). This practice renders less important the provisions of the Army Act (s. 163) for proof of enlistment by a certified copy of the attestation paper, which prevent a prosecution for desertion abroad failing by reason of the attestation paper being at home. The same section makes an attestation paper evidence of the soldier having given the answers set out in it, a provision useful in case of a prosecution for making a false answer; in which case an attestation paper alone, and not a copy, is evidence.

Acceptance of pay renders a soldier subject to military law, though not attested.

24. Notwithstanding the provisions for protecting persons from being entrapped into being soldiers, it has always been the law that a man in pay as a soldier is subject to military law, though not attested. This law is still maintained, because if a man chooses to serve and take pay as a soldier, he must be considered to have accepted the conditions under which he is paid and treated as a soldier, and therefore to be subject to military law. Even an alien who enlists by making a false answer would apparently come under the same rule. The Act, however, provides that a man in such a position may claim his discharge at any time, and the commanding officer is to forward the claim to the competent military authority for submission to the Secretary of State; but the man, until discharged, has no right to absent himself, and is liable in all respects to be treated as a soldier. This provision as to discharge will not

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of a certain time between his receipt of the shilling and notice, and his final attestation before the justice. On the other hand, if he absconded between his acceptance of the shilling and his appearance before the justice, he was liable to be apprehended as a vagabond, and punished accordingly, and also to be compulsorily attested as a soldier.

(*a*) For persons included in the term "justice" for the purpose of enlistment, see Army Act, s. 94.

(*b*) As to the form of oath and the validity of enlistment without it, see Clode, Mil. Forces, ii. 21.

(*c*) Army Act, ss. 80, 81, 100.

(*d*) K.R., paras. 1900–1906.

apply to a soldier who has gone through the form of attestation, but whose attestation is illegal, because after three months no advantage can be taken of any invalidity in the attestation (*a*).

Enlistment of apprentices.

25. If an apprentice in the United Kingdom, who was bound when under sixteen by a regular indenture for at least four years, enlists while still under twenty-one, he can be claimed by his master, through a proceeding before justices, but not otherwise. An apprentice who is so claimed is not liable afterwards to serve under his enlistment. The claim must be made within one month after the apprentice left his master's service. The apprentice is liable to, and on demand of his commanding officer must, be tried by the justice before whom the proceeding is taken for the offence of making a false statement on his attestation. With the above exception, and a similar one for indentured labourers in the colonies, a master cannot claim his servant who has enlisted (*b*).

Of minors.

26. An enlistment is a valid contract, although entered into by a person under twenty-one, who by the ordinary rules of law, except where modified by statute, cannot, as a general rule, contract any engagement (*c*).

Of aliens. Act of Settlement.

27. Though the Act of Settlement (*d*) which prohibits aliens holding any office, civil or military, does not in terms apply to soldiers, and though there was no statutory prohibition of the enlistment of foreigners, it seems to have been considered that the Crown had no authority either to enlist aliens for service in the United Kingdom, and consequently to punish them for desertion, or to billet them when in this country (*e*).

Limited power to enlist aliens.

28. Statutory power was therefore taken in 1757, and again in 1782, to quarter foreign troops in this kingdom (*f*), and in 1794 and in subsequent years statutory power was taken by the Crown to enlist aliens, even though they were to serve abroad (*g*). This was subject to the conditions that they were not to be brought into the United Kingdom, except with a view to operations abroad; that if so brought they were not to go more than five miles from the sea coast, and that there were never to be more than 5,000 men in the kingdom. A similar provision was made in 1800 (*h*), and during the Crimean War in 1854 (*i*), but in the latter case the only restrictions were that the number of men brought into the United Kingdom was not to exceed 10,000, and that they were not to be billeted. The illegality of the enlistment of aliens has also been recognised in other Acts (*k*), till at last, in 1837, it was enacted that, with the permission of the Crown (given in each case), an alien might be enlisted, but the number of aliens in any corps was not to exceed the proportion of one to every fifty natural-born subjects, and this pro-

(*a*) Army Act, s. 100.
(*b*) Army Act, ss. 96, 97.
(*c*) See cases cited in Clode, Mil. Forces, ii. p. 34, *R.* v. *Rotherfield Greys*, 1 B. & C., pp. 349, 350. See also *R.* v. *Hardwick*, 5 B. & Ald. 176.
(*d*) 12 & 13 Will. III, c. 2, s. 3. An officer does, but a private does not, hold an office.
(*e*) Clode, Mil. Forces, i. pp. 89, 90, 487; ii. pp. 35, 431-435. Foreign troops seem to have been received in or brought into the kingdom in the time of Anne and Geo. I. Report on recruiting, 1867, Parl. P., 215.
(*f*) See 30 Geo. II, c. 2; 22 Geo. III, c. 26.
(*g*) See 34 Geo. III, c. 43. The Act 29 Geo. II, c. 5, recited the enlistment of foreigners in America, and gave power to commission them, but not to enlist. This was given by the amending Act, 38 Geo. III, c. 13.
(*h*) 39 & 40 Geo. III, c. 100.
(*i*) 18 & 19 Vict. c. 2.
(*k*) See 44 Geo. III, c. 75; and 46 Geo. III, c. 23, continued by 55 Geo. III, c. 85. See also the provisions on the amalgamation of the Indian Army, 24 & 25 Vict. c. 74, s. 2.

Ch. X.

vision has been re-enacted in the Army Act (*a*). An alien so enlisted is by the Army Act made incapable of becoming an officer. A relaxation in favour of negroes and persons of colour was originally made in consequence of negroes captured in slavers being taken into the service of the Crown, and has been continued to legalise the recruiting of natives on the West Coast of Africa for service in the West India regiments and of Lascars in the East; and the relaxation has recently been extended to inhabitants of British protectorates in order to enable troops raised in the East and West African protectorates to serve outside their boundaries (*b*). It must also be recollected that under the Naturalization Act, 1870, a naturalized alien has the same privileges as a British subject, and therefore is capable of being enlisted to serve His Majesty.

33 & 34 Vict., c. 14.

Discharge.

Power of Crown to discharge soldiers.

29. The terms of the enlistment of a soldier, since he has been enlisted directly by the Crown, have always been to serve the Sovereign so long as his services are required, within the period for which he agrees to serve; consequently the Sovereign has always had power to discharge soldiers. But a soldier cannot be discharged except by order of the Sovereign or under some statutory power, such as the sentence of a court-martial, to which is added in the Army Act, an "order of the competent military authority" (*c*).

Certificate of discharge.

30. A soldier on his discharge is entitled to receive a certificate of discharge, so as to show that he is properly discharged and is not a deserter. In addition to the certificate of discharge, he also receives a certificate of character, showing his conduct, character, and cause of discharge. Until he is duly discharged he remains subject to military law. Discharge has been at different times regarded as a reward or as a punishment (*d*). When the service was for life, discharge was in many cases the highest object of a soldier's desires, and even now in a time of scarcity of labour and consequent high wages it may be a material advantage to him. There is no reference in the present law to discharge as a reward. On the other hand, discharge with ignominy, or discharge towards the end of a man's service shortly before he becomes entitled to receive pension, cannot but have the effect of a punishment.

Conveyance home of soldiers on discharge.

31. A soldier enlisted in the United Kingdom is entitled if, on the completion of his service, he is abroad, to be sent to the United Kingdom, free of expense, for his discharge; and a soldier enlisted in the United Kingdom, and discharged there, is entitled to be sent free of expense from the place where he is discharged to the place where he was attested, or to his residence, if his conveyance there costs no more (*e*). In no other case has a soldier any *statutory* right to be sent free of expense to any place on discharge, though, in some cases, he may be allowed a free conveyance as a matter of favour (*f*).

Disposal of lunatic soldiers.

32. If a soldier is a lunatic, a Secretary of State or an officer deputed by him for the purpose may send him on his discharge, and also his wife and child, to the workhouse of the parish or union to which he is chargeable, and if he is a dangerous lunatic may send

(*a*) 7 Will. IV & 1 Vict. c. 29; Army Act, s. 95 (1).
(*b*) Army Act, s. 95.
(*c*) Army Act, s. 92. For definition of the competent military authority, see Army Act, ss. 101 (1), 190 (32), also Rule 128. For regulations as to discharge, see K.R., paras. 376–412.
(*d*) See Clode, Mil. Forces ii. pp. 43–47.
(*e*) Army Act, s. 90. The old provisions enabling discharged soldiers and the wives and children of soldiers ordered abroad to obtain from a justice of the peace or mayor a certificate entitling them to beg their way home have been repealed.
(*f*) See Allowance Regulations, para. 339 (*a*), for the present practice.

him to the lunatic asylum for lunatics chargeable to that parish or union (*a*).

Transfer to reserve.

33. The only power, except with the soldier's consent, of sending him into the reserve before the stipulated time is on occasion of his being unfit to serve abroad, or of his regiment being ordered abroad shortly before the expiration of the time of his service with the colours (*b*). A soldier who is transferred to the Army Reserve is entitled, on transfer, to free conveyance to his place of attestation or selected place of residence (if not involving greater cost) in the United Kingdom, but has no claim to free conveyance to any place on final discharge from the army after completing his service in the reserve (*c*).

Offences in relation to enlistment.

34. Offences in relation to enlistment, when committed by persons who are at the time or thereafter become subject to military law, are punishable by military law under ss. 13, 32–34 of the Army Act. A man renders himself liable to punishment not exceeding imprisonment who, after being discharged with ignominy, or as incorrigible and worthless, or for misconduct, or on account of conviction for felony or a sentence of penal servitude, or dismissed with disgrace from the Navy, enlists without disclosing the circumstances of his discharge or dismissal.

A recruiter who enlists any man whom he has reason to believe to have been so discharged or dismissed, also renders himself liable to imprisonment.

The making of a false answer to any question on attestation renders the offender liable to imprisonment on the sentence either of a civil court of summary jurisdiction for the place where the offence was committed, or where the offender may happen to be, or of a court-martial (*d*); and any person who uses, or gives for use, for the purposes of enlistment a false statement as to character or previous employment is liable on summary conviction to a fine not exceeding twenty pounds (*e*).

No one may enlist soldiers unless duly authorised, and any person who does so is liable to a fine not exceeding twenty pounds (*f*).

A man who, while belonging to one corps, enlists in the same or any other corps, is guilty of fraudulent enlistment, and can be punished for it; but as he has made two engagements he can be held to either engagement, and is thus liable to serve, as the military authorities direct, in accordance with the terms of his original attestation, or those of his new attestation, and (unless he has enlisted in the corps to which he already belongs) in either of the corps to which he has been appointed to serve (*g*).

(*a*) Army Act, s. 91. See also K.R. 406-408.

(*b*) Army Act, s. 89.

(*c*) Army Act, s. 90. For the further benefits in this respect now enjoyed by reservists, see Allowance Regulations, para. 340 (*a*).

(*d*) Army Act, ss. 38, 99, and Notes.

(*e*) Seamen's and Soldiers' False Characters Act, 1906, (6 Edw. 7, c. 5), s. 2.

(*f*) Army Act, s. 98. Under the Mutiny Act, authority was in terms granted to consuls and other persons abroad to enlist soldiers; but the present Act makes it clear that those officers have only power, like the justices at home, to attest, and have no power to act otherwise in recruiting unless specially authorised to do so. See s. 94.

(*g*) For details see K.R., para. 522.

CHAPTER XI.

CONSTITUTION OF THE MILITARY FORCES OF THE CROWN.

Introductory.

Military forces consist of Regular forces and Auxiliary forces.

1. The military forces of the Crown are divided by the Army Act into the Regular forces and the Auxiliary forces.

The Regular forces may be divided into—

(1.) British forces;
(2.) Indian forces;
(3.) Colonial forces.

Observations on Indian forces.

2. The Indian forces consist of regiments permanently stationed in India, and formed almost entirely from natives of India. The officers and men of these forces, who are natives of India, are subject to the Indian Articles of War wherever they are serving, and are only to a limited extent subject to the Army Act (*a*). Besides the natives of India there are Europeans serving as officers and persons of certain degrees of European descent serving as non-commissioned officers, hospital apprentices, or otherwise, who, though forming part of the Indian forces, are subject to British and not to Indian military law. The enlistment of Europeans for these forces, except for medical or other special service, is prohibited (*b*). Commissions on the unattached list for appointment to the Indian Army may be given to cadets who have passed through Sandhurst. If it is required to supplement this direct supply, officers of the British forces are, if qualified according to the regulations for the time being in force, eligible for commissions, and if commissioned are transferred permanently to the Indian Army. Officers are employed, according as the Government of India may direct, in any military or civil employment, irrespective of their ranks in the Indian Army. Such officers, while holding civil employments, cannot assume a military command, but continue to receive promotion in military rank in the ordinary course; and on accepting any military appointment they are entitled to take military command (*c*).

Observations on Colonial forces.

3. The Colonial forces are of two classes, namely, the forces raised by the government of a colony, and the forces raised in a colony by direct order of His Majesty to serve as auxiliary to, and in fact to form part for the time being of, the regular forces. The first class of Colonial forces—those raised by the government of a colony—are only subject to the Army Act when serving with part of His

(*a*) Army Act, s. 180. The Indian Articles of War (Act No. 5 of 1869; see also Act No. 12 of 1894) provide that the military law enacted by those articles shall not apply "to any British-born subject of Her Majesty, or any legitimate Christian lineal descendant of such subject, whether in the paternal or maternal line, but all such persons belonging to Her Majesty's Indian Army shall be triable and punishable as if they belonged to Her Majesty's British forces." The expression "Natives of India," for the purposes of the Army Act and of this chapter, means all persons belonging to His Majesty's Indian Army who are triable by Indian and not by English military law.

(*b*) 23 & 24 Vict. c. 100; Army Act, s. 180 (2) (*h*) and note.

(*c*) Royal Warrant of 16 January, 1868, as amended.

Majesty's regular forces, and then only so far as the colonial law has not provided for their government and discipline, and subject to the exceptions specified in the general orders of the general officer commanding the forces with which they are serving. The Army Act, however (s. 177), provides that the colonial law may extend to the forces, although beyond the limits of the colony where they are raised.

The second class of Colonial forces—of which the West India regiment, the Royal Malta Artillery, the West African regiment, the non-Europeans of the Fortress Companies, Royal Engineers, at Hong Kong and Sierra Leone, and the local companies of Royal Artillery in Hong Kong, Ceylon, and elsewhere, are examples (*a*)—is referred to by ss. 175 (4) and 176 (3) of the Army Act. Their pay and maintenance are voted annually by the Imperial Parliament, and they are in fact Imperial forces although serving in a colony. The Royal Malta Artillery (before 1889 styled the Malta Fencible Artillery) are declared by the Army Act to be part of the regular forces, while the others are included in the regular forces by the Royal Warrant defining "Corps": but see s. 176 and note. The local companies of Royal Artillery in Hong Kong, &c., and the West India regiment are in fact enlisted to serve in any part of the world. A man may enlist in the Royal Malta Artillery either for service in Malta alone or for service in any part of the world.

British Forces.

British forces.

4. The British forces require a longer notice. They consist—
(1) Of the Army commonly so-called, including the Reserves;
(2) Of the Marines.

Constitution of "Army" in common acceptation of term.

5. The Army commonly so-called consists—
(1) Of cavalry, composed of four corps for the purpose of enlistment (*b*), and divided into thirty-one regiments;
(2) Of the Royal Regiment of Artillery, of which the mounted and dismounted branches are divided into two corps, named respectively:—(i) The Royal Horse Artillery and the Royal Field Artillery, to which is affiliated the Lancashire Royal Field Artillery (Militia); (ii) the Royal Garrison Artillery (which includes Mountain artillery and the Royal Artillery Clerks' section), to which are affiliated the Royal Garrison Artillery (Militia) and the Royal Garrison Artillery (Volunteers).
(3) Of the corps of Royal Engineers, divided into troops and companies (*c*).
(4) Of 157 battalions of infantry (of which nine form four regiments of foot-guards, while the remaining 148 are distributed into 69 territorial regiments). Each territorial regiment includes two or more line battalions, one or more battalions of Militia, and the infantry Volunteer battalions located in the territorial district (*d*).

(*a*) The local companies of Royal Artillery at Ceylon, Mauritius, Hong Kong, and Singapore have been formed into two battalions, styled respectively the Ceylon-Mauritius, and the Hong Kong-Singapore battalions.
(*b*) The corps of Household Cavalry, and the corps of Dragoons, Lancers, and Hussars, of the line.
(*c*) The Militia Engineers and the Volunteer Engineers also form part of the corps of Royal Engineers.
(*d*) Two regiments of Foot Guards have three battalions each, one regiment has two battalions, and one has one battalion; and each of five other regiments—the Royal Fusiliers, the Worcestershire Regiment, the Middlesex Regiment, the King's Royal Rifle Corps, and the Prince Consort's Own Rifle Brigade

Ch. XI.

(5) Of the Army Service Corps, which is sub-divided into the Transport, Supply, Remount, Mechanical Transport, and Barrack sections.

(6) Of the Army Medical Service, composed of the Army Medical Staff, and the Royal Army Medical Corps, to which are affiliated the Royal Army Medical Corps (Militia) and the Royal Army Medical Corps (Volunteers).

Departmental corps.

6. In addition there are departmental corps (*a*), namely, the Army Ordnance Corps, Army Pay Corps, Army Veterinary Corps, Band of the Royal Military College, Corps of the School of Musketry, Corps of Military Staff Clerks, Corps of Army Schoolmasters, Corps of Military Police (Mounted and Foot), Army Post Office Corps, and Military Provost Staff Corps. The duties of these corps are sufficiently indicated by their names. Each of them is a corps for the purposes of the Army Act, though the appointment, enlistment, and transfer of officers and men is not regulated quite in the same way as in the case of the territorial regiments; and in connection with some of the above corps civilians are employed who are not subject to military law.

Other departments connected with the Army.

7. Further, it is necessary to mention various departments connected with the army, which are not corps within the meaning of the Army Act. These are the Army Pay Department, Army Veterinary Staff, Army Accounts Department, Army Chaplains' Department, Army Ordnance Department, and Queen Alexandra's Imperial Military Nursing Service. They are not technically corps within the meaning of the Army Act, inasmuch as they are not declared to be so by Royal Warrant. If, however, any soldiers subject to military law were added to the above departments, they would be a "portion of His Majesty's regular forces employed on some service," and therefore be a corps within the meaning of the Army Act (*b*).

Unit of army for enlistment and service is the corps.

8. For the purposes of enlistment and service, the unit in the army (in the Army Act referred to by the common name of "corps") is one of the above regiments or corps. A soldier, on his enlistment, is appointed to a corps, and is bound to serve in any part of it; and may belong for the whole of his military life to the corps to which he is first appointed. The officers are also appointed to these corps, but are all alike officers of His Majesty's land forces, and have army rank as such, which may or may not be the same as their regimental rank; that is to say, the rank in the above unit. They are consequently legally liable to serve with any portion of the army, if so ordered, and not merely with the unit to which they may be appointed; though in practice they are not required to do so. An officer has no right to resign his commission at all times and under any circumstances whenever he pleases. This was decided long ago in the case of officers serving the East India Company, and recently in the case of a naval officer who, having been refused leave to resign, sent in his resignation, and quitted the service while abroad in order to take up a civil appointment at home (*c*). Exactly the same principles are applicable to commissions in the army.

—contains four battalions of regulars. Each of the above regiments, and each branch of the Royal Artillery, and also the Royal Engineers, Army Service Corps, and Royal Army Medical Corps, is a separate corps for the purposes of enlistment and other purposes of the Army Act.

(*a*) Royal Warrant, 9 April, 1904. As to precedence, K.R., para. 1761.

(*b*) Army Act, s. 190 (15) (a) (iv.).

(*c*) *Parker* v. *Lord Clive*, 4 Burr. 2419; *Vertue* v. *Lord Clive*, 4 Burr. 2472; and *R.* v. *Cuming, Ex p. Hall*, L. R. 19 Q. B. D. 13, *Hearson* v. *Churchill*, L. R. [1892] 2 Q. B. 144. See also the *dictum* of Cockburn, C. J., in *Ex parte Trenchard*, L. R.

Unit for other purposes not necessarily the same.

9. The unit for purposes of discipline and some purposes of administration is not necessarily the same as the above unit. In the case of infantry, for instance, the unit for purposes of discipline is *primâ facie* one battalion. If, however, part of the battalion is serving detached from the rest, that part becomes the unit for purposes of discipline, while for many purposes of administration it remains part of the battalion; at the same time all men in a battalion are liable to be ordered to serve in any other part of the corps, whereas they cannot be transferred to any other corps without their consent or except as a punishment for certain offences, or in special cases provided for by the Army Act (*a*).

Explanation of term "commanding officer."

10. Throughout the Army Act the "commanding officer" is referred to for many purposes, and particularly for the purposes of investigating charges and awarding summary and minor punishments. The Act does not define the term "commanding officer." The Rules of Procedure contain a definition, for the purposes of all the rules and also for the purpose of the sections of the Act relating to "*Courts-martial*," to the "*Execution of sentences*," and to the "*Power of Commanding Officer*" (*b*). In cases to which this definition does not apply, it must depend on the custom of the service and the King's Regulations, as to who is, under any given circumstances, the commanding officer for a particular purpose.

Reserves—(1.) Army Reserve. (2.) Militia Reserve.

11. The Reserves have been treated above as part of what is commonly called the army, although they are really only part of the army when called out for active service. The Reserve Forces Acts provide for the formation of an Army Reserve and of a Militia Reserve, but enlistment for the Militia Reserve has ceased since April, 1901 (*c*).

Army Reserve divided into two classes.

12. The Reserve Forces Act, 1882, authorises the keeping up of an Army Reserve containing two classes, each to consist of such numbers as may be from time to time provided by Parliament; the first class is liable to service either at home or abroad; the second class, if it were in existence, would be liable only to serve in the United Kingdom.

First class of Army Reserve.

13. The first class consists of three sections, A, B, and D; Section D could not formerly be called out for permanent service until the whole of Sections A and B had been called out, and was therefore known as the supplemental reserve, but this restriction is now no longer operative (*d*).

Section A of first class.

14. Section A (*e*) consists of reservists who engage at the time of their first transfer to the reserve to join that section, or are permitted to join that section from section B within the first three months of their transfer to the reserve, to complete in that section the residue of the period required to complete the first year of reserve service. No man is allowed to engage in this section unless his character on transfer to the reserve was not lower than "good," and unless he is pronounced to be medically fit. The number of men in the section is limited to 6,000, and preference is given to men who have served abroad over those who have only served at

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9 Q. B. 406. Clode, Mil. Forces, ii, p. 96. Command formerly depended on the commission, but is now the subject of regulation, Army Act, s. 71; see K.R. 217-236 and 37-47.

(*a*) See ch. X paras. 14-17, and Army Act, s. 83.

(*b*) See Rule 129, and K.R., para. 456.

(*c*) Army Order 88 of 1901.

(*d*) 45 & 46 Vict. c. 48, s. 3. Army Reserve Regulations, Royal Warrant, 16th March, 1907, para. 1. 63 & 64 Vict. c. 42, s. 1; see p. 621, note (*a*), below. Section C was abolished in 1904, and the men in it transferred to Section B: A.O. 202 of 1904.

(*e*) Army Reserve Regulations, para. 1. Section A as originally constituted was closed for enlistment after 1879, and consequently became extinct.

Ch. XI.

home. Men joining this section must agree in writing to the conditions of service (*a*), and are enrolled therein on the date of their transfer to the reserve, or, if transferred from Section B, within three months from their first transfer to that section.

A reservist of Section A may revoke his engagement as such by giving three months' notice in writing to his commanding officer, if not required for permanent service during that period. On receiving his release, or on completing his engagement in Section A (which is limited to the 12 months immediately following transfer to the reserve, unless he is permitted to re-engage for a further period of one year), he reverts to section B of the reserve under the terms of his Army attestation. If a reservist of Section A so misconducts himself as to make himself not immediately available for service, he is relegated to Section B (*b*).

Section B of first class.

15. Section B consists of soldiers enlisted for short service, who, having completed their period of colour service, are transferred to the Army Reserve under the conditions of their enlistment, to complete the period for which they originally engaged. The usual conditions for short service men are seven years with the colours and five in the reserve.

Section B also includes men who revert to it from Section A; and men the residue of whose term of colour service has been converted into service in the reserve.

The last mentioned class of men comprised in Section B includes soldiers whose conditions of service have been varied by the Secretary of State so as to allow them, instead of serving with the colours during their whole period of army service, to enter the reserve at once for the residue of the term of their original enlistment. They are transferred to the reserve, and placed in Section B. (*c*).

Entry into Section B.

17. A soldier who enters Section B receives a parchment (Reserve) certificate (*d*). His discharge documents are made out on his entering the reserve, but remain in the custody of the officer charged with the payment of the Army Reserve, until he finally quits the reserve, when his parchment certificate of discharge is handed to him completed and corrected to date.

Illustrations of Sections A and B.

18. Some examples will make clearer the above explanations of Sections A and B of the Army Reserve. V, W, and X all enlist in the infantry for twelve years, of which seven years are to be in army service and five years in reserve service. V and W serve with the colours seven years and then pass into the Army Reserve. V engages to join Section A, and continues in it for twelve months from the date of his passing to the reserve, when he reverts to Section B for the remaining four years of his reserve service, and is then discharged. W serves five years in Section B and is then discharged. X, after serving three years with the colours, converts, with the sanction of the Secretary of State, the rest of his army service into reserve service, and passes into Section B, and after nine years in it is discharged.

Section D.

19. Section D consists of men who, on the completion of their first period of engagement (when completed wholly with the colours, or partly with the colours and partly in Section B of the reserve), are enlisted or re-engaged to serve for a further period of four years in this section. In the case of the Infantry and Artillery Reserve, men who on discharge after completing their

(*a*) See para. 24 below.
(*b*) Army Reserve Regulations, para. 47.
(*c*) Army Act, s. 78. K.R. 367, 368.
(*d*) A reservist serving in Section A belongs for the purpose of transfer to Section B.

first period of engagement received characters other than "bad" or "very bad" are eligible for service in this section of the reserve; but in the case of other arms only those are eligible whose character is at least "good."

A man can be enlisted if he is in Section B of the reserve, within six months, and if he is with the colours, within the fortnight before his discharge, but in either case his service in Section D does not commence until his discharge. Re-engagement for a second period is not allowed except in the case of men possessing certain trade qualifications (*a*) such as farriers, saddlers, &c., and if their age exceeds 46 years, the re-engagement can only extend till they reach 50. A note of the man's enlistment or re-engagement (as the case may be) is entered on his parchment discharge certificate, or parchment reserve certificate, and on his discharge from Section D he receives a parchment certificate of discharge, the form of which depends on whether he enlisted or re-engaged for Section D (*b*).

Enlistment in and, (except in the case of men possessing the special trade qualifications above-mentioned) re-engagements for, Section D were suspended between the 1st July, 1906, and the 1st July, 1907 (*c*).

Second class of Army Reserve.

20. The second class of the Army Reserve consisted, besides men enrolled under former Acts, of men enlisted or enrolled from among—

(*a.*) Chelsea out-pensioners, or Greenwich out-pensioners being ex-marines, and

(*b.*) Men who had served full time in the army (*d*).

Both these divisions of the second class are extinct.

Entry by transfer or enlistment.

21. Men who enter the reserve, if they enter under the terms of their original enlistment, or on a variation of those terms, are transferred; and, if otherwise, are either enlisted or re-engaged, and may be enlisted or re-engaged for such term and in such manner as is fixed by regulations (*e*).

Annual training of Army Reserve men.

22. Army Reserve men are liable to be called out annually for training, for a time not exceeding twelve days or twenty drills, and may then be attached to a body of the regular or auxiliary forces (*f*).

Calling out in aid of civil power.

23. They are also liable to be called out by a Secretary of State, or by the Lord Lieutenant in Ireland, to aid the civil power in the preservation of the public peace. The men residing in any town or district are liable to be called out for the same purpose by the officer commanding the town or district on the requisition in writing of a justice (*g*).

Liability to permanent service.

24. Further, they are liable to be called out on permanent service, by proclamation of His Majesty in Council "in case of "imminent national danger or of great emergency, the occasion "being first communicated to Parliament, if Parliament be then "sitting, or declared in Council and notified by the Proclamation "if Parliament be not then sitting" (*h*).

(*a*) Army Reserve Regulations, para. 18.
(*b*) Army Reserve Regulations, para. 28.
(*c*) Army Orders 164 of 1906, and 131 of 1907.
(*d*) Reserve Forces Act, 1882, s. 3.
(*e*) Reserve Forces Act, 1882, s. 4.
(*f*) Reserve Forces Act, 1882, s. 11. See also Instructions for the training and drill of the Army Reserve (Infantry) issued annually with Army Orders, generally in March or April.
(*g*) Reserve Forces Act, 1882, s. 5.
(*h*) Reserve Forces Act, 1882, s. 12. Army Act, s. 88 (2). These words were substituted, in 1870, for "in case of actual invasion or imminent danger thereof, or in case a state of war exists between Her Majesty and any foreign power," and in

Ch. XI.

One proclamation issued under s. 12 of the Reserve Forces Act, 1882, may order the Army and Militia Reserve, or either of them, to be called out, and may charge a Secretary of State with the duty of giving the necessary directions. These directions may extend to one force or both forces, and by them the Secretary of State can from time to time call out according as may be necessary either some or all of the men of either force.

When either the Army or Militia Reserve is called out, Parliament is to be summoned by proclamation to meet within ten days, if it would not otherwise meet sooner (*a*).

In addition to the above liability, reservists belonging to Section A are liable under Section 1 of the Reserve Forces and Militia Act, 1898, to be called out on permanent service during the period of their engagement in that section, whether it lasts for twelve months or for two years, if required for service outside the United Kingdom when warlike operations are in preparation or in progress. When so called out they are liable to serve with the colours for not more than twelve months. Should, however, any portion of the reserve be called out on permanent service under Section 12 of the Act of 1882, then reservists of Section A become liable to serve to the same extent as any other portion of the reserve which has been called out (*b*).

The calling out of Section A under the Act of 1898 does not require a proclamation by the King in Council, nor involve the meeting of Parliament, but any exercise of this power must be reported to Parliament as soon as may be.

Extent of liability.

25. Every man, when called out, is liable to serve until His Majesty no longer requires his services; but not beyond his unexpired term of service in the reserve, with the addition of twelve months more if a state of war exists, or if he is on service beyond the seas, or if the men in the reserves are at the time called out, that is, if there is imminent national danger or great emergency. An Army Reserve man, when called out, forms part of the Regular Forces, and may be appointed to any corps as a soldier, and transferred within three months afterwards to any other corps; but a man enlisted before the passing of the Reserve Forces Act, 1906, cannot be appointed or transferred to an arm or branch of the service other than that in which he previously served unless he consents (*c*).

Under the Army Reserve Regulations, a reserve man is not allowed to proceed as a settler to any foreign country, nor to any colony in which there is not a British garrison, except in very exceptional cases, and is not allowed to quit the United Kingdom or proceed to sea without leave from his commanding officer. He is also duly to report himself and, if called on, to present himself for medical examination (*d*).

Re-entry on Army Service.

26. When so allowed by regulations an Army Reserve man can voluntarily re-enter on service with the colours for all or any part of the residue unexpired of the term of his original enlistment, or

consequence of the expiration of the five years for which men enrolled before the 9th of August, 1870, were enrolled, the words in the text now apply to all men in the Army Reserve. See Army Reserve Act, 1867, s. 10; Army Enlistment Act, 1870, ss. 5, 14.

(*a*) Reserve Forces Act, 1882, s. 13.

(*b*) Para 14; Army Reserve Regulations, paras. 43 and 44; Territorial and Reserve Forces Act, 1907, s. 32 (2).

(*c*) Reserve Forces Act, 1882, s. 14; Reserve Forces Act, 1906 (6 Edw. VII, c. 11), s. 2.

(*d*) Army Reserve Regulations, paras. 57–76; Reserve Forces Act, 1899. The Reserve Forces Act, 1906, s. 1 (2), provides for the making of regulations under s. 20 of the Reserve Forces Act, 1882, prescribing the condition under which men belonging to the Reserve may reside out of the United Kingdom, and the conditions under which men may be enlisted (out of the United Kingdom) for the Reserve, but at present no regulations have been made under this provision.

for any time not exceeding twelve years from the date of his original enlistment (*a*).

Militia Reserve.

27. As stated above, the Reserve Forces Act contains provisions (see ss. 8–10) for the formation of a Militia Reserve. It is not, however, necessary to give here more than a very brief account of the statutory provisions in question, inasmuch as there is now no longer any Militia Reserve, enlistment for it having ceased in April, 1901 (*b*). The provisions in question are as follows :—

The Militia Reserve is to consist of such number of men as may be provided by Parliament ; and they may be enlisted from the Militia of any part of the United Kingdom either for six years or for the residue of their militia engagement (*c*).

Annual training.

28. A man in the Militia Reserve is liable to be called out annually for training for such time as the Secretary of State directs, not exceeding 56 days, and may be so trained with either the regular or auxiliary forces ; but this annual training is in substitution for the annual training to which he is liable as a militiaman (*d*).

Liability to permanent service.

29. The Militia Reserve can be called out on permanent service by the King's proclamation mentioned above (*e*). A man in the Militia Reserve when called out becomes for all purposes a soldier in the regular forces, and can be appointed or transferred to a corps in the same manner as an Army Reserve man, and is otherwise under the same liability to service (*f*).

Other provisions as to Militia Reserve men.

30. A man in the Militia Reserve remains for all purposes a militiaman until called out for permanent service. When so called out, his place in the militia is deemed vacant, and is to be filled up. When released from permanent service, he is to return to the militia for the remainder of his engagement, and until he can resume his former position, is to be a supernumerary, but is to have rank, pay, and allowances not lower than when he entered on permanent service (*g*). The Secretary of State may discharge a Militia Reserve man from the reserve, and thereupon he becomes a militiaman only (*g*).

General orders and regulations for reserve forces and general result.

31. The King, by order under the hand of a Secretary of State, can make orders for the government, discipline, and pay of the Army and Militia Reserve, and other matters relating to them ; and subject to any such orders the Secretary of State can make regulations for the like purpose (*h*).

The result is that men in the Army Reserve do not practically form a portion of His Majesty's regular forces, except when called out for permanent service ; and that men in the Militia Reserve, when not called out for permanent service, are in fact militiamen and members of the auxiliary forces, and not of the regular forces.

Marines.

32. On several occasions regiments appear to have been raised for service at sea, but it was also formerly the practice for regiments of the land forces to be sent to serve on shipboard ; and even as late as the present century certain regiments were more usually sent on this service than others.

Regiment of Royal Marines raised in 1755.

33. The regiment now known as the Royal Marines was first

(*a*) Army Act, s. 78 (2). Under existing regulations, a man cannot, under ordinary circumstances, re-enter on army service unless specially permitted to do so. K.R., para. 375 ; Army Reserve Regulations, paras. 23–76.
(*b*) A.O. 88 of 1901.
(*c*) Reserve Forces Act, 1882, ss. 8, 9.
(*d*) Reserve Forces Act, 1882, s. 11.
(*e*) Para. 24.
(*f*) Reserve Forces Act, 1882, s. 14.
(*g*) Reserve Forces Act, 1882, s. 10.
(*h*) Reserve Forces Act, 1882, s. 20.

Ch. XI.

raised in the year 1755, and consists of two divisions, the infantry and artillery. The artillery rank after the Royal Artillery; the infantry rank after the Royal Berkshire regiment (*a*). The men are liable to serve on board His Majesty's ships, and when borne on the books of any of His Majesty's ships for such service are subject to the Naval Discipline Act, as if they were seamen of the Royal Navy. When not borne on the books of any of His Majesty's ships they are subject to the Army Act (*b*).

Term of service, &c.

34. The men are enlisted according to the procedure in Part II of the Army Act, except that the duration of their service is fixed, by Acts applying only to them, at a term of twelve years, with a power to re-engage for a further period of nine years, making up twenty-one years in the whole (*c*). The service of a Marine on a foreign station may be prolonged for two years; and a marine who desires to continue in the service after twenty-one years may give notice of his desire, and, with the approval of his commanding officer, may continue in the service, with a right to be discharged after the expiration of three months' notice. A marine, on the completion of his term of service abroad, is, like a soldier, entitled on his discharge to be sent home to England. A marine is not allowed to reckon towards completion of his engagement the time during which he is absent from his duty by reason of imprisonment, or desertion, or other specified circumstances (*d*).

Transfer of Royal Marines to army.

35. The Secretary of State and the Admiralty can make regulations providing for the transfer with his consent of a man of the Royal Marines to another part of the regular forces, and of a soldier of any part of the regular forces to the Royal Marines, and a man so transferred is to become a Royal Marine or a soldier of the other part of the regular forces as nearly as possible as if he had been enlisted for the force to which he is transferred (*e*).

Expenses of Royal Marines.

36. The expenses of the marine force are included in the votes for the Admiralty, and the force is under the control of the Admiralty, and not of the Secretary of State for War; and the Admiralty exercise, in respect of the Royal Marines, many functions that are exercised, in the case of the land forces, directly by His Majesty (*f*).

Auxiliary Forces (*g*).

Connection between auxiliary and regular forces.

37. The auxiliary forces are connected with the regular forces by the inclusion of the militia and the volunteers of the different localities in the regiments of regulars before mentioned. Certain battalions of those regiments are militia battalions, and others are styled volunteer battalions (*h*).

Association of militia in corps

38. Every militiaman enlists in the militia for some county, but the King has power by order under the hand of a Secretary of

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(*a*) Clode, Mil. Forces, i. chs. iv, xiii. As to precedence, K.R., para. 1761.
(*b*) Army Act, ss. 179 (15), 190 (8).
(*c*) 10 & 11 Vict. c. 63; 20 Vict. c. 1.
(*d*) 10 & 11 Vict. c. 63, s. 8.
(*e*) Army Act, s. 179 (12), as amended by s. 7 of Annual Act, 1884, and s. 7 of Annual Act, 1886.
(*f*) Army Act, s. 179 (4) (6)–(11).
(*g*) This term is defined in the Army Act, s. 190 (12), but has been discontinued in official documents. A.O. 190 of 1891.
No notice is taken in this chapter of the Territorial and Reserve Forces Act, 1907. See above, *Advertisement*, p. vii.
(*h*) See above, para. 5 and notes thereto. Certain regiments, however, of Militia and Volunteers are not included in regiments of regulars, but form corps by themselves: see the heading "Corps composed wholly of auxiliary forces," in the Royal Warrant of 9th April, 1904, defining "Corps."

State to form the militia into regiments and battalions, and to form such regiments and battalions into corps (*a*), and under this power the infantry militia are included in the regiments of regulars; but the recruit must be appointed to serve in the regiment for the county, or for an area comprising the whole or part of the county. In like manner the militia artillery forms part of the Royal Artillery, and the militia engineers form part of the Royal Engineers. There are no militia cavalry expressly so-called, but the yeomanry (which till 1901 were a volunteer cavalry force) have now been put upon the same basis as the militia, but are not in any way included in the regular cavalry. A certain number of militia companies are included in the Royal Army Medical Corps.

with regulars.

39. The two descriptions of militia, the general (or regular) militia and the local militia, and also the general character of the enactments respecting the local militia, and respecting the regular militia so far as raised by ballot, have been stated elsewhere (*b*), and as the local militia and the ballot for the regular militia are at present in abeyance, further details on that part of the subject will not be added here. Almost the only difference between the balloted force of the regular militia, and the enlisted force as it at present exists, consists in the mode in which they are raised; and all the provisions of the Militia Act, 1882 (*c*), except the five sections of Part II (which apply only to the militia voluntarily enlisted), apply to the regular militia, however raised.

General and local militia.

40. The Militia Act, 1882, requires the Crown to appoint Lieutenants for the different counties in the kingdom; those Lieutenants may appoint vice-lieutenants, and must appoint at least twenty deputy-lieutenants. The persons appointed are to be approved and may be displaced by the Crown, and must hold certain property qualifications (*d*).

Provisions of Militia Act, 1882. Lieutenants of counties and deputy-lieutenants.

41. The King by order under the hand of a Secretary of State can make orders as to government, discipline, and pay, and all other matters respecting the militia, and, so far as the orders do not extend, the Secretary of State can make regulations for the same purpose, either generally or in any special case. The above are in this chapter referred to as the "orders and regulations."

Government of militia.

42. The Act authorises the Crown to raise and keep up the militia. As before stated, the numbers are to be annually fixed by Parliament; and as the present force is raised by voluntary enlistment, and the ballot is in abeyance, quotas are not required (*e*). The men are to be enlisted by such persons as the orders and regulations direct (*f*), and are at present enlisted by the same recruiting officers as the men of the regular forces. The enlistment and attestation of a militiaman is effected in much the same manner as the enlistment of a regular soldier (*g*). The enlistment may be for such period not exceeding 6 years, as the orders and regulations fix, and within 12 months of the end of his current period of service, a man may be re-engaged for such further period not exceeding 6 years, as may be so fixed. At present the first period is fixed at 6 years, and the second at 4 years from

Number and voluntary enlistment of men.

(*a*) Militia Act, 1882, ss. 4, 8.
(*b*) See Ch. IX.
(*c*) 45 & 46 Vict. c. 49, repealing the Militia (Voluntary Enlistment) Act, 1875, 38 & 39 Vict. c. 69.
(*d*) Militia Act, 1882, ss. 29-36.
(*e*) Militia Act, 1882, ss. 3, 37. See Ch. IX, para. 77.
(*f*) Militia Act, 1882, s. 7.
(*g*) Militia Act, 1882, ss. 9, 10. Militia Regulations, para. 66; Recruiting Regulations, para. 185.

Ch. XI.

the expiration of the current engagement; but a man may, if not more than 45 years of age, re-engage at the end of the last training during his current engagement or at any subsequent period prior to the expiration of his engagement, for a period of four years (*a*). Men who have been discharged without pension from the regular army, militia, or imperial yeomanry, after not less than 2 years' service, and with at least a fair character, may re-enlist in the militia for a term of 4 years, provided they are not more than 45 years of age. Pensioners may also re-enlist if under 45 years of age (*b*).

Officers and staff.

43. Besides the formation of the militia into regiments and corps before mentioned, the orders and regulations can regulate the appointment, rank, duties, and number of the officers and the staff of each regiment; but the lieutenants of counties have the right of nominating to first commissions within 30 days after each vacancy (*c*). The officers are always subject to military law (*d*).

Command.

44. The command to be exercised by officers or non-commissioned officers of regulars over the militia, or by militia officers or non-commissioned officers over other portions of the regular forces, depends on regulations made by the King (*e*).

Permanent staff of militia.

45. Besides the non-commissioned officers and men of the militia who are merely called out occasionally for annual training, there are certain non-commissioned officers and men in continuous service who form, with the adjutant and other officers, the permanent staff of the militia, and train the recruits, and carry on the administration of the battalions. All of them are subject to the Army Act, and not to the Militia Acts (*f*).

Training of recruits.

46. Recruits when enlisted have to undergo a preliminary training for the period fixed by the orders and regulations, not exceeding six months, and the orders and regulations may provide for any officer or man being called up with his own consent for purposes of instruction (*g*).

Annual training and exercise.

47. The force must be trained and exercised for not less than 21 nor more than 28 days in every year at such times and places in the United Kingdom as the orders and regulations fix; and His Majesty in Council may extend the period of training to 56 days. Further, His Majesty in Council may at any time reduce the period of training to less than 21 days, or suspend it entirely (*h*). In the case of militiamen enlisted after the 16th August, 1901, and serving in the mobile militia artillery, the period is to be some period prescribed by the regulations not exceeding 84 days (*i*).

Under the provisions of the Militia and Yeomanry Act, 1902 (*k*), the Secretary of State has power to dispense with any statutory

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(*a*) Militia Act, 1882, s. 8.
(*b*) Recruiting Regulations, paras. 191, 192.
(*c*) Militia Act, 1882, ss. 4, 6. This enactment as to the orders rendered it unnecessary to re-enact the provisions of 34 and 35 Vict., c. 86, s. 6, and Militia Act, 1875, s. 21, as to the commissions to Militia officers and their ranking with officers of the regulars as the youngest of their rank.
(*d*) Army Act, s. 175 (3).
(*e*) Army Act, s. 71. K.R., para. 217 (v).
(*f*) Army Act, ss. 175 (2), 176 (2), 181 (2).
(*g*) Militia Act, 1882, ss. 14, 15. The period of preliminary drill is (except in case of field artillery and submarine mining engineers) sixty-three days. Militia Regulations, paras. 171–175.
(*h*) Militia Act 1882, ss. 16, 17. As to the period now in force, see Militia Regulations, para. 198.
(*i*) Militia and Yeomanry Act, 1901, s. 2.
(*k*) 2 Edw. 7, c. 39, s. 1 (1).

requirements as to the training of militia, and in pursuance of this power a reserve division of the militia was formed in 1903 (*a*). Men in the reserve division are not required to undergo the ordinary training, but may be called up for instruction, if infantry for a course of musketry instruction not exceeding 3 days each year, and if belonging to any other arm for a period not exceeding 14 days every second year (*b*).

Embodiment.

48. In case of imminent national danger, or of great emergency, His Majesty in Council may by proclamation order the militia to be embodied, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by proclamation, if Parliament be not sitting. The proclamation can order a Secretary of State to give directions for actually calling out some or all of the militia for embodiment. When the militia is so ordered to be embodied, Parliament is to be summoned by proclamation to meet within 10 days, if it would not otherwise meet sooner (*c*).

Liability to service.

49. The militia, whether English, Scotch, or Irish, are liable to serve in any part of the United Kingdom. They are not liable to serve abroad, but can volunteer for service in any place out of the United Kingdom. Any member of the militia may also volunteer to serve out of the United Kingdom for a period not exceeding one year, whether an order embodying the militia is in force or not at the time (*d*). A special service section of the militia was formed in 1899 under the last-mentioned provision, but has been discontinued since 1901 (*e*).

Disembodiment.

50. His Majesty may by proclamation disembody the militia whenever he pleases. There is no statutory limit to the time during which the force can be kept embodied, but Parliament can practically enforce the disembodiment by refusing to vote the money for the maintenance of the force (*f*). Until the proclamation is issued, a Secretary of State can give directions from time to time for actually calling out for embodiment or for disembodying any part of the militia.

Application of military law to militia.

51. An officer of the militia is at all times subject to military law, and a militiaman is subject to it when the corps to which he belongs is called out for training or embodied, and during his preliminary training, and when he is undergoing any training with any portion of the regular forces or otherwise, and when he is otherwise attached to the regular forces (*g*).

The provisions of the Army Act as to the composition of courts-martial make officers of the regular forces and of the militia equally eligible to sit on all courts-martial, whether to try regulars or militiamen (*h*).

Enlistment into regular forces.

52. Enlisted militiamen may, if the orders and regulations so allow, enlist in accordance with the conditions thereby fixed into the regular forces, and a militiaman so enlisting is thereby discharged from the militia (*i*).

(*a*) Army Order 36 of 1903.
(*b*) See generally Militia Regulations, paras. 595–614.
(*c*) Militia Act, 1882, ss. 18, 19.
(*d*) Militia Act, 1882, s. 12, as amended by the Reserve Forces and Militia Act, 1898. For previous Acts empowering the Crown to accept voluntary offers by the Militia for service abroad, see Ch. IX, para. 81.
(*e*) Army Order 88 of 1901.
(*f*) Militia Act, 1882, s. 20. Clode, Mil. Forces, i. 49.
(*g*) Army Act, ss. 175 (3), 176 (6).
(*h*) Army Act, ss. 50, 178. Rule 20 (B).
(*i*) Militia Act, 1882, s. 11. Militia Regulations, para. 84; Recruiting Regulations, paras. 29–38.

Ch. XI.

Fraudulent enlistment by militiaman.

53. It is no offence for a militiaman when not embodied to enlist in the regular forces, unless on his attestation he makes a false answer with respect to his belonging to the militia; but if a militiaman when embodied, without fulfilling the conditions enabling him to enlist, enlists or enrols himself either in the regular, reserve, or auxiliary forces, or in any force raised in India or a colony, or enters the navy, he is guilty of fraudulent enlistment; and if when not embodied he, without fulfilling the conditions enabling him to enlist, enlists in the reserve or auxiliary forces, or enters the navy, he is punishable for making a false answer. Any man belonging to the reserve, or yeomanry, or volunteers, or navy, who enlists in the militia is punishable for making a false answer; and if he was at the time called out on permanent service or actual military service, he is guilty of fraudulent enlistment. A man guilty of fraudulent enlistment as described in this paragraph is not only punishable by military law, but (except in the case of enlistment by a militiaman into the regulars) can be punished by a court of summary jurisdiction with fine or imprisonment (*a*).

Desertion and absence without leave.

54. A militiaman who fails without excuse to come up for the preliminary training, or for the annual training and exercise, is guilty of absence without leave, and a militiaman who fails, without excuse, to come up for embodiment is guilty, according to circumstances, of desertion or absence without leave. A militiaman who is guilty of desertion or absence without leave either under this provision or under the Army Act, while subject to that Act, can be tried either by court-martial or by a court of summary jurisdiction, and if tried by the Civil Court, can be sentenced to fine or imprisonment (*b*).

Discharge.

55. An enlisted militiaman remains subject to the Militia Act until discharged according to the orders and regulations (*c*).

Exemptions.

56. Certain exemptions of officers and men of the militia are mentioned elsewhere (*d*).

Exceptional position of certain localities.

57. The City of London still has its separate militia, as if it were a separate county, and in London the lieutenant's commission is granted to a number of persons, as was frequently done before the Restoration, and not to an individual, and is not granted under the Militia Act, 1882 (*e*). So also in Cornwall and Devon a regiment of miners, if raised, is to be raised like the militia of a separate county (*f*). A separate militia can be raised for the Cinque Ports, but in fact has not been raised for many years. Special provision is also made for the militia of the Isle of Wight (*g*).

Imperial Yeomanry.

58. The Imperial Yeomanry consists of 56 regiments, each raised in its authorised recruiting area, and each forming a corps by itself and not attached to any regular regiment.

Speaking generally, the account of the government, etc., of the militia, given above in paras. 41–45 and 48–55 applies equally to the yeomanry, as now constituted under the Militia and Yeomanry Acts, 1901 and 1902 (*h*); the chief points of difference between the yeomanry and militia will now be shortly dealt with.

Points of difference

59. Although, like a militia recruit, a recruit for the yeomanry is enlisted for the county for which he is raised, the term of

(*a*) Militia Act, 1882, s. 26; Army Act, s. 13. He also forfeits bounty, under the Militia Regulations, para. 396.
(*b*) Militia Act, 1882, s. 23.
(*c*) Militia Act, 1882, s. 9 (3).
(*d*) See Army Act, s. 181 (5), and note thereto.
(*e*) Militia Act, 1882, ss. 49, 50 See also above, Ch. IX, paras. 64 and 66, notes, 84.
(*f*) Militia Act, 1882, s. 49 (5). See also above, Ch. IX, notes to paras. 64, 66.
(*g*) Militia Act, 1882, s. 49 (1) (3). The provisions of s. 49 (2) of the Militia Act, 1882, for a separate Tower Hamlets Militia, were superseded by s. 91 of the Local Government Act, 1888 (51 and 52 Vict. c. 41).
(*h*) 1 Edw. VII, c. 14, and 2 Edw. VII, c. 39; and the Yeomanry Regulations.

enlistment is under the present regulations only three years (*a*); yeoman, under 49 years of age, may re-engage at the end of the last training of their current engagement, or at any subsequent period prior to the expiration of their engagement, for a period of one year from the termination of that engagement (*b*).

The provisions relating to the preliminary training of the militia do not apply to the yeomanry (*c*), but a yeoman does not rank as efficient unless he has (1) kept the necessary number of attendances at drills (in the case of recruits 20, in the case of trained officers and men 10); (2) fulfilled the conditions laid down in the Musketry Regulations as to musketry training and practice; and (3) attended the annual training (*d*). The statutory period of annual training of the yeomanry is, instead of that provided in case of the militia (*e*), a period of not less than 14 nor more than 18 days in every year; the present prescribed period is 16 days (*f*).

The expenses of yeomanry regiments are in part defrayed out of various allowances granted by the Government. The most important of these is the contingent allowance granted in respect of each officer or yeoman who makes himself wholly or partially efficient, and varying in amount as all or only some of the conditions of efficiency are fulfilled; this contingent allowance belongs to the regiment, and (unlike a militiaman's bounty) does not go to increase the pay of the individual officer or yeoman (*g*).

Regiments of yeomanry have still power under the Yeomanry Act, 1804 (*h*), to make regimental rules, providing for such matters as the fining of "non-efficients," and the delivery up of arms on leaving the regiment, etc.; these rules require the sanction of the Secretary of State, and, under the present regulations, are required to be in the form scheduled to the regulations (*i*).

The yeomanry may still act in aid of the Civil Power for the suppression of riots, though they cannot be called out compulsorily for such service, and while so serving are subject to military law. They are still called out for actual military service under the National Defence Act, 1888 and are not embodied under the enactments relating to the Militia (*k*).

There is no restriction on the numbers of the Yeomanry which the Crown may raise.

Officers of yeomanry.

60. The officers are commissioned by His Majesty in the same manner as officers of the regular forces, and rank with officers of the regular forces as the youngest of their rank; with officers of militia, according to the date of their commissions; and have precedence over volunteer officers of equal degree (*l*).

Volunteers of Great Britain.

62. The Volunteers of Great Britain consist of corps raised voluntarily, whose services have been offered to and accepted by the Crown. One corps, the Honourable Artillery Company of London, derives its origin from a fraternity or guild "of artillery of long-bows cross-bows and hand-guns," to whom Henry VIII granted a charter of incorporation in 1537 (*m*). The services of the other

(*a*) Recruiting Regulations, para. 190.
(*b*) Yeomanry Regulations, para. 66.
(*c*) 1 Edw. VII, c. 14, s. 1 (a).
(*d*) Yeomanry Regulations, para. 130.
(*e*) See para. 47 above.
(*f*) 1 Edw. VII, c. 14, s. 1 (b); Yeomanry Regulations, para. 155.
(*g*) Yeomanry Regulations, paras. 269–283.
(*h*) See ss. 3 and 56, and as to enforcement of fines, s. 51.
(*i*) Yeomanry Regulations, paras. 90–92, Appx. III.
(*k*) Yeomanry Act, 1804, s. 23; Yeomanry Regulations, para. 125. Ch. IX, para. 112 *a*.
(*l*) 34 & 35 Vict. c. 86, s. 6; K.R. para. 217 (v). As to command, see below, para. 72.
(*m*) Raikes' Hist. of Hon. Artillery Company, i. 17; Clode, Mil. Forces. i. 401; Grose, Mil. Antiq. i. 143, *et seq.* The Volunteer Act, 1863 (26 & 27 Vict, c. 65), does not apply to the Hon. Artillery Company, which is regulated by special Royal Warrant, and is not affiliated to the regular artillery.

Ch. XI.

corps have been mostly accepted, either under the Act of 1804 (*a*), or under the Act of 1863 (*b*), now in force.

Numbers and corps of volunteers.

63. The number of volunteers is unlimited, and the King may disband any corps. The word "corps," as applied to the volunteers, has rather a different meaning from that which it has hitherto had in this chapter. The volunteer corps, of whatever size, is the principal unit for all purposes: subscriptions and property belong to the corps, and vest in its commanding officer, and are administered under rules made by the officers and men of the corps; the men are enrolled in and the officers appointed to the corps, and the commanding officer of the corps has power to dismiss a man from the corps.

As many corps were too small to form a regiment, provision was made by the Act of 1863 for the formation of administrative regiments. These regiments have now disappeared, and the smaller corps have been consolidated into a larger corps and form companies in it. On this consolidation the property and subscriptions of the several constituent corps were vested in the commanding officer of the consolidated corps, to be managed according to its rules, but certain exceptions were made in favour of the companies corresponding to the constituent corps, as regards both the property and men belonging to them (*c*).

Volunteer corps may make rules for the management of the property, finances, and civil affairs of the corps, including rules for securing the efficiency of members of the corps, and may impose fines for the breach of any such rule. The rules require confirmation by the Secretary of State. Fines for the breach of a rule are recoverable on complaint to a court of summary jurisdiction (*d*).

Expense of volunteers.

64. Originally the corps were presumed to be supported by voluntary subscriptions, but for some years grants of money and arms have been made by the Government, on conditions requiring the volunteers to make themselves efficient by a certain amount of training.

Liability of volunteers to service.

65. In case of imminent national danger or of great emergency (the occasion being first communicated to Parliament, or, if Parliament be not sitting, declared in Council and notified by proclamation), the King may order the volunteers to be called out for actual military service, and they are bound to serve in Great Britain until released by order made after a proclamation declaring the occasion to have passed (*e*). There is power to call out part only, and not only the whole, of a corps (*f*).

Individual members of volunteer corps may agree to be liable to be called out at any time for purposes of coast defence in Great Britain, and the Secretary of State may make regulations as to the calling out of volunteers who have so agreed, and for adapting ss. 17 to 20 of the Act of 1863 to the case (*g*).

Regulations of Secretary of State.

66. A Secretary of State has power to make regulations for governing the volunteer force (*h*).

(*a*) 44 Geo. III. c. 54, repealed as regards volunteer infantry by 26 & 27 Vict. c. 65.
(*b*) 26 & 27 Vict. c. 65, ss. 2, 13.
(*c*) Regulation of Forces Act, 1881, s. 9.
(*d*) 26 & 27 Vict. c. 65, ss. 24 and 27, as amended by 60 & 61 Vict. c. 47. See *R. v. Lewis and Moss*, L.R. [1896] 1 Q.B. 655. The fines are civil debts, *i.e.*, they may be enforced by distraint, but not by imprisonment: see ss. 6 and 35 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).
(*e*) 26 & 27 Vict. c. 65, s. 17, as amended by 63 & 64 Vict. c. 39, s. 1.
(*f*) 58 & 59 Vict. c. 23, s. 1.
(*g*) 63 & 64 Vict. c. 39, s. 2.
(*h*) 26 & 27 Vict. c. 65, s. 16.

Application of military law to volunteers.

67. The volunteers are subject to military law, when being trained or exercised with any portion of the regulars, or with any portion of the militia when subject to military law; when attached to, or otherwise acting as part of, any of the regular forces; and when on actual military service; but, except when on actual military service, the commanding officer must give due notice to the volunteers that they are about to become subject to military law (*a*). Provision is made for the discharge of volunteers, and for the temporary arrest of a volunteer who misconducts himself when not under military law.

Officers of volunteers.

68. The officers are commissioned by His Majesty in the same manner as officers of the regular forces, and rank with officers of the regular forces, the militia, and the yeomanry, as the youngest of their rank (*b*).

Ireland.

69. There are no volunteers in Ireland.

Permanent staff of volunteers.

70. A permanent staff has been provided for the volunteers much in the same way as for the militia; and consists of officers and non-commissioned officers, who serve permanently at the headquarters, and attend to the administration of the corps and the training of the men. They are all subject to the Army Act. Soldiers posted to the permanent staff of a volunteer corps belong to the territorial regiment within whose district the headquarters of the corps are situate (*c*), except in the case of non-commissioned officers of the Guards who are not to be transferred to the territorial regiments.

Trial by court-martial.

71. The requirement that courts-martial for trying men belonging to the yeomanry or volunteers should consist of yeomanry or volunteer officers only, was abolished in 1879, but a Rule of Procedure requires that on the trial of a person belonging to the auxiliary forces, one member of the court shall, if practicable, belong to those forces, and to the same branch as that to which the accused belongs (*d*).

Command.

72. The command to be exercised by volunteer officers over the regular forces and by regular officers over volunteers depends upon regulations made by the King (*e*).

(*a*) Army Act, s. 176 (3). As to the period during which they are subject to military law, see note on Part V of the Army Act.
(*b*) 34 & 35 Vict. c. 86, s. 6; K.R. para. 217 (v).
(*c*) K.R. paras. 337–353.
(*d*) Army Act, s. 50 (1); Rule 20 (B).
(*e*) Army Act, s. 71; K.R., para. 217 (v).

CHAPTER XII.

RELATION OF OFFICERS AND SOLDIERS TO CIVIL LIFE.

How far in England a soldier is divested of civil rights and liabilities.

1. The English law on this subject differs from that of some foreign countries, and a man who becomes a soldier does not cease to be a citizen (*a*). If he commits an offence against the ordinary criminal law, he can be tried and punished as if he were a civilian, and serious liabilities are incurred by any officer who refuses to deliver him up to the civil magistrate on application (*b*).

Illustrations. Inability to change domicile or settlement.

2. On the other hand, his civil rights and duties are necessarily subject to some limitation for the purpose of enabling him to fulfil his engagement to serve the Crown (*c*). Thus he cannot, while in the service, change his domicile, or change the parish of his settlement (*d*). If he marries without the consent of the military authorities, the marriage is legal, but his wife will not be provided for by those authorities, and he is not punishable for deserting or neglecting to maintain his wife or family, or leaving them chargeable to the union. Special provision has, however, been made for proceeding against him to compel him to maintain his wife and family or bastard child, and for the deduction of a certain sum from his pay for the purpose of such maintenance (*e*).

Special provision as to maintenance of wife and family.

Restrictions on creditors of soldier.

3. Certain restrictions have also been imposed on the creditors of the soldier, so as to prevent the Crown losing his services. He cannot be arrested or compelled to appear before a court on account of any debt, damages, or sum of money under 30*l.*; but the exemption applies to the person not the property of a soldier, and a creditor may sue and have execution, so long as he does not touch the person, pay, or military equipment of the soldier. To avoid injustice to the public from this exemption, the proclamation of "crying down credit" has been adopted, originally under an Article of War, and now under the King's Regulations (*f*). An officer or soldier is unable, legally, to charge or assign his pay or pension (*g*)

(*a*) Clode, Mil. Forces, i. 144; ii. 143. As to the duty of soldiers to perform their part as citizens in repressing breaches of the peace, Chief Justice Sir James Mansfield thus spoke, in 1802: "Since much has been said about soldiers, I will "correct a strange mistaken notion which has got abroad, that because men are "soldiers they cease to be citizens; a soldier is gifted with all the rights of other "citizens, and he is as much bound to prevent a breach of the peace or a felony, as "any other citizen. . . . . If it is necessary for the purpose of preventing "mischief, or for the execution of the laws, it is not only the right of soldiers, but it is "their duty to exert themselves in the assisting the execution of a legal process, or "to prevent any crime or mischief being committed. It is, therefore, highly im-"portant that the mistake should be corrected, which supposes that an English-"man, by taking upon him the additional character of a soldier, puts off any of "the rights or duties of an Englishman." *Burdett* v. *Abbott*, 4 Taunt. p. 401.

(*b*) Army Act, ss. 39, 41, 162. Under the Jurisdiction in Homicides Act, 1862 (25 & 26 Vict. c. 65), a person subject to military law who is charged with the murder or manslaughter of any other person subject to military law in England or Ireland, may be tried in London or Dublin more speedily than under the ordinary law.

(*c*) Clode, Mil. Forces, i. 206.

(*d*) Clode, Mil. Forces, ii. 37, 38, and the legal cases there cited.

(*e*) Army Act, s. 145.

(*f*) Army Act, s. 144; K.R., para. 442.

(*g*) Army Act, s. 141. As to the appropriation of a portion of the pay or pension of a bankrupt officer to his creditors, see s. 53 of the Bankruptcy Act, 1883 (47 & 48 Vict. c. 52 and *In re Ward*, L.R. [1897] 1 Q.B.

Wills of officers and soldiers.

4. An officer or soldier on actual military service, even though not of full age, has power to dispose of his personal estate by a nuncupative will, *i.e.*, a will without writing, declared before a sufficient number of witnesses (*a*). Probate of the will and letters of administration of any common soldier, who is slain or dies in the service of His Majesty, are exempt from stamp duty (*b*). Special provision has been made for collecting and realising the effects of a deceased officer or soldier, and paying certain military debts thereout (*c*).

Exemption of soldier servants from licence duty.

5. Officers are entitled to an exemption from licence duty for any servant who is a soldier in the army, and is employed by the officer in accordance with the regulations of the service (*d*).

Privileges of soldiers in relation to letters.

6. Every non-commissioned officer and soldier whilst on service, is entitled by statute, independently of any post-office regulations for the time being in force, to send or receive letters not exceeding half an ounce by post for one penny prepaid, but any foreign postage in addition must be paid. Where a letter is re-directed, an officer as well as a non-commissioned officer or soldier is entitled to receive the letter free from any postage, foreign or other, chargeable in respect of the re-direction (*e*).

Exemptions from local rates and tolls.

7. Officers and soldiers have not any personal exemption from any local rates or tolls, but where an officer occupies property in respect of his office the occupation is treated as occupation by the Crown, and he is not liable to be rated in respect of that property, inasmuch as the Crown is exempt from local rates. If, therefore, the occupation is for his own personal benefit, and not for the benefit of the Crown, an officer will be liable to be rated like any other individual. Similarly, officers and soldiers of the regular forces, when on duty, are exempt from tolls (*f*), but are not so exempt when travelling for their own purposes only.

Exemption from service on juries, &c.

8. Officers of the army, militia, or yeomanry, while on full pay, are exempt in England from serving on juries (*g*). This exemption is an absolute exemption from serving on a coroner's jury, but as regards a grand jury or common jury is qualified, as it is only an exemption from being placed on the jury list, and if an officer is on the list he is bound to serve notwithstanding his exemption. Care must therefore be taken to claim the exemption at the time when the lists of jurors are made out in August and September. A soldier is entitled to an absolute exemption from serving on any jury (*h*). Officers on full pay or half-pay are also exempt from being compelled to serve any municipal office in England (*i*). Officers of the army, although upon half pay, and persons in the reserve,

(*a*) This privilege was originally reserved to soldiers and sailors by 29 Cha. II, c. 3; it now depends on 7 Will. IV. and 1 Vict. c. 26, s. 11. As to when a soldier is on actual military service, see *In the Goods of Hiscocx*, L.R. [1901] P. 78, and *Gattward v. Knee*, L.R. [1902] P. 99; and as to what may amount to a valid testamentary document, see *In the Goods of Scott*, L.R. [1903] P. 245.

(*b*) 55 Geo. III, c. 184, sched. part III.

(*c*) Regimental Debts Act, 1893 (56 Vict. c. 5).

(*d*) 32 & 33 Vict. c. 14, s. 19 (.). The exemption from the licence duty for keeping a horse, which is given by the same Act, is rendered unnecessary by the repeal of the licence duty by 51 & 48 Vict. c. 16.

(*e*) 3 & 4 Vict. c. 96, s. 53; 10 & 11 Vict. c. 85, s. 7; 24 & 24 Vict. c. 65; 38 & 39 Vict. c. 22, s. 7; K.R., paras. 1354–1358, based on a letter from the Treasury to the War Office of 15th July, 1885.

(*f*) Army Act, s. 143. The Local Acts regulating turnpike roads, &c., usually contain like exemptions. There are now no turnpike roads left. The Volunteer Act 1863, (s. 45) and the Yeomanry Act, 1804 (s. 13) contain similar provisions as to the volunteers and yeomanry.

(*g*) 33 & 34 Vict. c. 77, s. 9, and schedule.

(*h*) Army Act, s. 147.

(*i*) 45 & 46 Vict. c. 50, s. 253.

militia, and yeomanry forces, are also exempt from serving the office of overseer (*a*). The above provisions may have been made for the purpose of enabling an officer to fulfil his military duties, but the provision of the Army Act which disqualifies an officer on the active list from holding the office of sheriff, mayor, alderman, or any municipal office in any place in the United Kingdom, was doubtless originally enacted from jealousy of the military forces acquiring any undue influence by holding influential offices. This provision, however, does not render an officer ineligible for membership of a county council (*b*). Officers on full pay are prohibited by the King's Regulations from joining the directorate of any public or other company without permission from the War Office; and they, as well as soldiers, are prohibited from acting either directly or indirectly as agents for any company, firm, or individual engaged in trade (*c*).

Right to vote at Parliamentary election, and to sit in House of Commons.

9. An officer or soldier has the same right as a civilian to vote at an election for members of Parliament, and if himself elected, is entitled without leave or order to attend the House of Commons (*d*). Officers who may be elected members of the House of Commons will be placed on half pay (*e*). The acceptance by a member of the House of Commons of a first commission in the army vacates his seat, but the acceptance of a new commission by a member already a commissioned officer does not vacate his seat; and it may be that an officer in the army will not vacate his seat by the acceptance of an office which, if filled by a civilian, would vacate the seat (*f*). An officer or soldier, if in the United Kingdom, ought to be allowed, if he wishes, to go to the place of election and record his vote, unless military exigencies render it impossible (*g*). But soldiers not being electors are excluded, in Great Britain, though not in Ireland, from being present at places of election (*h*).

Military Savings Banks.

10. In conclusion may be noticed the Act which enables military savings banks to be established for the purpose of military deposits from non-commissioned officers and soldiers, under regulations made by the Secretary of State for War, with the concurrence of the Commander-in-Chief and of the Treasury (*i*).

(*a*) Steer's Parish Law (6th Edn.), pp. 105, 361.
(*b*) Army Act, s. 146.
(*c*) K.R., para. 448.
(*d*) Clode, Mil. Forces, i. 192, 195. The statement that an officer or soldier is entitled without leave to go to a place of election and record his vote appears to have been based upon 10 & 11 Vict. c. 21, which repealed the former Act (8 Geo. 2. c. 30). Those Acts never applied to persons out of the United Kingdom, and as regards persons in the United Kingdom, appear to have been merely intended to save from the enactments prohibiting soldiers being present at a place of election, those of them who were entitled to attend and vote.
(*e*) A.O. 252 of 1906.
(*f*) 6 Anne, c. 41, s. 27 (c. 7, s. 28 in ordinary editions). Clode, Mil. Forces, i. pp. 192, 193.
(*g*) As to right to vote in respect of occupation of quarters, see *Atkinson* v. *Collard*, L.R. 16 Q.B.D. 254; *Spittall* v. *Brook*, L.R. 18 Q.B.D. 426.
(*h*) 10 & 11 Vict. c. 21; 26 & 27 Vict. c. 12. For the history of the old practice of keeping soldiers out of assize towns during the holding of assizes, see Clode, Mil. Forces, ii. pp. 205–205.
(*i*) 22 & 23 Vict. c. 20.

CHAPTER XIII.

SUMMARY OF THE LAW OF RIOT AND INSURRECTION.

Object of chapter.

1. The object of this chapter is to give such an explanation of the law relating to unlawful assemblies, riots, and insurrections as may be useful to officers when called upon by the civil authorities to assist them in suppressing disturbances (*a*).

Definition of unlawful assembly.

2. The first question is, What is an unlawful assembly? for the mere gathering together of people is no crime in the eye of the law. "There is no doubt that the people of this country have a perfect "right to meet for the purpose of stating what are or even what "they consider to be their grievances; that right they always have "had, and I trust always will have; but in order to transmit that "right unimpaired to posterity, it is necessary that it should "be regulated by law and restrained by reason" (*b*).

An unlawful assembly, then, is any meeting whatsoever of great numbers of people with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the King's subjects, as where great numbers complaining of a common grievance meet together armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no one can foresee what may be the event of such an assembly (*c*). The commission of an act of violence by any one or more of those assembled, is not necessary to make the assembly unlawful, if its character and circumstances are such as to be calculated to alarm, not only foolish or timid people, but persons of reasonable firmness and courage (*d*). If the assembly is for a lawful purpose and with no intention of carrying out that purpose in an unlawful manner, the assembly is not an unlawful assembly, even though the persons assembling know that the assembly is likely to be resisted by others (*e*).

Example of what is, and what is not, an unlawful assembly.

3. Accordingly, in the case of a Chartist meeting at Newport in 1839, an assembly was held to be unlawful in which from 300 to 1,000 persons were gathered together, and in respect to which evidence was given that the speakers endeavoured to incite the people to disaffection and the use of physical force. No actual outrage was perpetrated, but numbers of persons armed with sticks were proved to have marched in procession, and several witnesses swore that they apprehended danger both to life and property (*f*). On the other hand, a peaceful meeting of the Salva-

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(*a*) Riot is a common law offence; the term insurrection is used in this chapter as a description of the offence that is technically called "levying war against the King."

(*b*) Charge of Baron Alderson to the Grand Jury in *R.* v. *Vincent*, 9 C. & P. 95.

(*c*) Hawkins, Bk. i. ch. lxv. sec. 9. See also *R.* v. *Vincent*, *ante*; *R.* v. *Neale*, *ib.*, 431.

(*d*) See the summing up of Baron Alderson in *R.* v. *Vincent*, 9 C. & P. at p. 109.

(*e*) *Beatty* v. *Gillbanks*, L.R. 9 Q.B.D. 308. The principle established by this case does not appear to be affected by the later decision in *Wise* v. *Dunning*, L.R. [1902] 1 K.B. 167; see Dicey, Law of the Constitution (6th Edn.), App. Note V., p. 448.

(*f*) *R.* v. *Vincent*, *ante*; and see *R.* v. *Neale*, *ante*, in which the law is similarly laid down by Mr. Justice Littledale.

Ch. XIII. tion Army is not an unlawful assembly and cannot be made so by the knowledge that the assembly will be resisted and a breach of the peace ensue (*a*).

Definition of "riot."

4. A riot is a tumultuous disturbance of the peace by three or more persons assembling together of their own authority with an intent mutually to assist one another against any who oppose them, in the execution of some enterprise *of a private nature, and afterwards actually executing the same* in a violent and turbulent manner to the terror of the people. It is immaterial whether the act done be unlawful or not, but there must be an act (*b*). Doing the act in a manner calculated to inspire people with terror is punishable, whether it be lawful or unlawful; but where the object of the assembly is lawful, it requires far stronger evidence of the terror caused by the means used, to induce a jury to return a verdict of guilty, than if the object were unlawful.

Examples of riot.

5. For example, persons assembling together on a racecourse and tumultuously pulling down a booth, or gathering together in a tumultuous manner and breaking threshing machines, are guilty of a riot. Again, a number of persons assembling for a lawful object, such as pulling down an inclosure which has been illegally put up, will be guilty of a riot, if their assembling is accompanied with circumstances of actual force or violence calculated to inspire people with terror. On the other hand, if an assembly of persons be not accompanied with such circumstances as these, it can never be deemed a riot.

Definition of "insurrection."

6. An insurrection differs from a riot in this—that a riot has in view some enterprise *of a private nature*, while an insurrection savours of high treason, and contemplates some enterprise of a *general and public nature* (*c*). An insurrection, in short, involves an intention to levy war against the King, as it is technically called; or otherwise to act in general defiance of the government of the country.

Examples of insurrection.

7. For example, a mob assembling to pull down or burn a cotton mill, because the proprietor is obnoxious to them, are engaged in a riot. If the object were to attack a barrack or seize a store of arms with a view to arm themselves and make war against the government, they would be in a state of insurrection.

Case of *R.* v. *Frost.*

8. In the case of *R.* v. *Frost* (*d*), the insurgents, numbering about 5,000, were armed, many with guns or pikes, some with swords, others with mandrils (a kind of pickaxe for cutting coal), and others with scythes fixed on sticks, or with bludgeons. They marched to Newport in a sort of military order, and dangerously wounded a person sent out to reconnoitre. On arriving at Newport, they attempted to force their way into the Westgate Inn, where troops had been stationed by the mayor, and called upon the soldiers to surrender. On the reply being given, "No, never," they fired on the soldiers, who after a time returned the fire, when the insurgents dispersed.

In this case it was contended on behalf of the prisoners that the object of the insurgents was to procure the liberation of certain

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(*a*) *See* p. 211, Note (*e*).

(*b*) Hawkins, I.k. 1, ch. lxv. sec. 1; and see *R.* v. *Graham*, 16 Cox C.C. 422.

(*c*) Charge of Baron Alderson to the Grand Jury in *R.* v. *Vincent*, 9 C. & P. 94. See Lord Mansfield's charge on the trial of Lord George Gordon in 1781, 21 State Trials, 544. Lord George Gordon was indicted for high treason, but acquitted on the ground that his acts, in the opinion of the jury, did not amount to constructive levying of war against the Crown.

(*d*) 9 C. & P. 129. This case also arose out of the Chartist movement in 1839, and should be compared with *R.* v. *Vincent*, *ante*.

prisoners who were in custody at the Westgate Inn, and to obtain better treatment for a prisoner named Vincent. To this it was replied that the intention of the prisoners was to take possession of the town of Newport by surprise, terror, or force, and to use that possession as the means of raising a rebellion.

It was admitted that, if the first of the above objects was the real one, the prisoners were not guilty of high treason, but evidence was given that the second was their real purpose, and that they had been planning an insurrection for some time. Accordingly, they were found guilty of high treason ; in other words, the enterprise was considered to be an insurrection, and not a riot.

Distinction between unlawful assembly, riot, and insurrection.

9. It will be seen from the foregoing definitions and examples that an unlawful assembly and a riot are different stages as it were of the crime of insurrection. An unlawful assembly is an assembly which may reasonably be apprehended to cause danger to the public peace, through the action of the persons constituting the assembly. As soon as an act of violence is perpetrated it becomes a riot ; while if the act of violence be one of a public nature, and with the intention of carrying into effect any general political purpose, it becomes an insurrection or rebellion, and not a riot (*a*).

Distinction in punishment.

10. As might be expected from the different character of the meetings, the offence of taking part in an unlawful assembly, a riot, or an insurrection involves very different degrees of guilt and very different punishments. A man convicted of being at an unlawful assembly, or of taking part in a riot, is guilty of a misdemeanour, and is punishable at common law by fine or imprisonment, or both ; but by statute there is this wide difference made between the two offences, that in the case of riot hard labour may be inflicted, whilst in the case of an unlawful assembly the imprisonment is without hard labour (*b*). A participator in an insurrection may be held guilty of treason and be capitally punished.

Additional crimes usually incident to riots and insurrections.

11. The offence of taking part in a riot, or an insurrection, is independent of any additional crime which the persons assembled may either themselves commit, or of which they may be held to be guilty as principals, by reason of their forming part of the mob which commits such crime. For example, a riot seldom takes place without the rioters breaking into houses or otherwise destroying property. An insurrection almost always involves murder or attempts to murder. All persons present at the commission of such crimes are equally principals in the breaking into houses,

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(*a*) Baron Alderson in his charge to the Grand Jury, delivered at the Monmouth Assizes in 1839 (9 C. & P. 94 n.), cited the following observations of Mr. Justice Bayley :—"If the persons who assemble together say, 'We will have what we "want, whether it be according to law or not,' a meeting for such a purpose, how-"ever it may be masked, if it be really for a purpose of that kind, is illegal. If a "meeting, from its general appearance, and from all the accompanying circumstances, "is calculated to excite terror, alarm, and consternation, it is generally criminal "and unlawful." Baron Alderson continued, "These are, as I take it, the clear "principles of law, an unlawful assembly differing in this respect from a riot, that "a riot must go forward to the perpetration of some act which the unlawful assembly "is calculated to originate and inspire. Something must be executed in a turbulent "manner to constitute a riot, but in these cases it must be some enterprise of a "private nature, because if the enterprise be of a general and public nature, it "savours of high treason, and there is no doubt that if you find these persons "assembled together by delegates dispersed from any central jurisdiction in this "kingdom, and those persons so meeting together in consequence of a delegation "from a central body commit any act of violence for the purpose of carrying into "effect any general political purpose, they run the risk of being charged with high "treason."

(*b*) 1 Hawk., c. 65, s. 12. Hard labour may be given, under 3 Geo. 4, c. 114. As will be seen hereafter, rioters remaining for an hour after the Riot Act has been read become felons.

Ch. XIII.

destroying the property, murder, or attempt to murder, although at the time some of them take no actual part in the transaction at all: but practically the extreme measure of punishment is usually awarded only to the leaders (*a*).

Suppression of unlawful assemblies, riots, and insurrection.

12. The law would fall far short of what is needed for the preservation of society if it did not allow all necessary measures to be taken for dispersing or otherwise putting an end to unlawful assemblies, riots, and insurrection. The law accordingly declares that an unlawful assembly may be dispersed, although it has committed no act of violence; for it is better that individuals should be stopped before they proceed to outrage and violence; and a small amount of punishment in the first instance will probably save a great amount of crime afterwards (*b*).

Degree of force to be used in suppression of unlawful assemblies.

13. So far the law is clear; but a grave practical difficulty arises as to the degree of force to be used in effecting the dispersion. If the assembly is verging on a riot, and the demeanour of those present shows that they are bent on serious mischief, it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly, even using force if necessary. If, on the other hand, the assembly is unlawful but in a slight degree, and there is no immediate apprehension of violence, it can scarcely be justifiable to attempt to disperse it by force, or wise, as a rule, to display force. No positive rule can be laid down, but different cases must depend on their own circumstances. If resort be had to force, the principle is that so much force only is to be used as is sufficient to effect the object in view, namely, the dispersion of the assembly; and if injury results to any person from the use of that force, the question to be tried is whether the means used were or were not more violent than the occasion required (*c*).

Suppression of riots.

14. In dealing with riot, the law speaks more decidedly. Every magistrate, sheriff, constable, and other peace officer is required to do all that in him lies for the suppression of a riot, and each has authority to command all other subjects of the King to assist him in that undertaking. Every man is bound, when so called upon, to yield a ready and implicit obedience, and do his utmost to assist in suppressing any tumultuous assembly (*d*).

Extract from charge of Chief Justice Tindal.

15. "If the riot be general and dangerous, every subject may "arm himself against the evil-doers to keep the peace. Such was "the opinion of all the judges of England in the time of Queen "Elizabeth in a case called 'The case of Arms' (Popham's Rep., "121); although the judges add that it would be more discreet for "every one in such a case to attend and be assistant to the justices, "sheriffs, or other ministers of the King in doing this. It would "undoubtedly be more advisable so to do; for the presence and "authority of the magistrate would restrain the proceeding to such "extremities until the danger was sufficiently immediate, or until "some felony was either committed or could not be prevented "without recourse to arms; and, at all events, the assistance given "by men who act in subordination and concert with the civil "magistrate, will be more effectual to attain the object proposed "than any efforts, however well intended, of separated and "disunited individuals. But if the occasion demands immediate "action, and no opportunity is given for procuring the advice or

(*a*) See *R.* v. *Howell*, 9 C. & P. 437.
(*b*) Baron Alderson in *R.* v. *Vincent*, 9 C. & P. 94.
(*c*) *R.* v. *Neale*, 9 C. & P. 435. See also Report on the Featherstone Riot (Parl. Pap. 1893-94, C. 7234), p. 10, and below, p. 220, Note.
(*d*) Charge of Chief Justice Tindal to the Grand Jury in 1832, quoted in *R.* v. *Finney*, 5 C. & P. 262, note.

"sanction of the magistrate, it is the duty of every subject to act "for himself and upon his own responsibility in suppressing a "riotous and tumultuous assembly; and he may be assured that "whatever is honestly done by him in the execution of that "object will be supported and justified by the common law" (*a*).

Use of deadly weapons by those engaged in dispersing riots.

16. With regard to the circumstances which may justify the use of deadly weapons by those engaged in endeavouring to disperse a riot, Chief Justice Tindal, in the charge already quoted, made the following observations (*b*):—"There is one case which stands in a different situation from the rest, and to which it may be proper that I should call your particular attention—I mean the case of James Cossley Lewis, who is at present at large upon his recognizance, but who stands charged, upon an inquest before the coroner, with the offence of manslaughter, in shooting a boy of the name of Morris. It appears from the depositions before the coroner, that Lewis was acting in aid of the civil authorities in assisting to clear the streets, after proclamation had been regularly made, requiring the rioters to disperse themselves, and after they had continued together for more than an hour from the time of making proclamation. It appears, also, by the testimony of the witnesses that the pistol was not aimed at the boy who was unfortunately struck by the ball. The nature, however, of the offence committed by Lewis will not depend so much upon that fact as upon the circumstances under which the pistol was originally discharged. If the firing of the pistol by Lewis was a rash act, uncalled for by the occasion, or if it was discharged negligently and carelessly, the offence would amount to manslaughter, *but if it was discharged in the fair and honest execution of his duty, in endeavouring to disperse the mob, by reason of their resisting*, the act of firing the pistol was then an act justified by the occasion, under the Riot Act before referred to, and the killing of the boy would then amount to accidental death only, and not to the offence of manslaughter."

In apprehension of rioters.

17. There is no doubt that a person lawfully engaged in trying to apprehend a rioter is justified in using any degree of force to protect himself, or to overcome resistance. It is, however, sometimes impracticable to attempt the apprehension of individuals, without using means calculated to occasion bloodshed, and the firing on a mob (which is what using deadly weapons practically means) can only be excused by the necessity of self protection, or by the circumstance of the force at the disposal of the authorities being so small that the commission of some felonious outrage—such as the burning of a mill, or the breaking open of a prison, or the attacking of a barrack—cannot be otherwise prevented (*c*).

(*a*) Charge of Chief Justice Tindal, quoted in *R.* v. *Pinney*, 5 C. & P. 262, note. From early times the duty of sheriffs and magistrates to suppress riots and apprehend rioters, and the obligation of the people of the county to assist them have been laid down and enforced by statutes. Some of these, as, for example, 15 Rich. II, c. 2 (1391), 13 Hen. IV, c. 7 (1411), 2 Hen. V, st. 1, c. 8 (1414), are still unrepealed, and to some extent, at all events in force.

(*b*) *R.* v. *Pinney*, 5 C. & P. 267, note.

(*c*) In the Six Mile Bridge case or riots at the County Clare election in 1852, an escort of two officers, two sergeants, and forty rank and file, employed to protect voters going to poll, were attacked and stoned by the mob. The soldiers fired without orders from their officers, but, as was subsequently sworn by the commanding officer, *in defence of their own lives*, and killed two or three of the mob. Indictments were preferred against those who fired, or were supposed to have fired, but the bills were thrown out by the Grand Jury. The charge of Mr. Justice Perrin to the Grand Jury in this case appears virtually to ignore the riotous character and unlawful object of the mob, and the fact of the unprovoked attack on the soldiers.

Ch. XIII.

In suppression of insurrections.

18. The observations made above with respect to the duty of suppressing riots apply still more strongly to insurrections, or "riots which savour of rebellion." In such cases the use of arms may be resorted to as soon as the intention of the insurgents to carry their purpose by force is shown by open acts of violence, and it becomes apparent that immediate action is necessary.

Account of Riot Act.

19. The expediency of arming the civil power with authority to put an end to serious risings, before the commission of actual outrage, was doubtless the motive which led to the passing of the Riot Act (1 Geo. I. stat. 2, c. 5) in 1715 (*a*).

Effect of proclamation under Act.

20. The first section enacts that, "If any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace . . . . and being required or commanded by any . . . . justice, ... by proclamation to be made in the King's name, in the form hereinafter directed, to disperse themselves, and peaceably to depart . . . , shall, to the number of twelve or more . . . . . unlawfully, riotously, and tumultuously remain or continue together for one hour after such command or request made by proclamation," they shall be adjudged felons. Suppose, therefore, a riot to have commenced, and the authorities present to be of opinion that serious consequences may be apprehended if the rioters are not dispersed within a limited time, it would be their duty to make the proclamation required by this Act; and if twelve or more persons remain together riotously and tumultuously after the expiration of an hour they may be treated as felons, and will be subject to the punishment of penal servitude for life or not less than three years, or to imprisonment with or without hard labour, not exceeding two years.

Form of proclamation.

21. The form of the proclamation and the mode of making it are provided for in the next section, which directs the justice, among the rioters, or as near them as he can safely come, to command silence, and then with a loud voice to make proclamation in the following words:—

"Our Sovereign Lord the King chargeth and commandeth all "persons, being assembled, immediately to disperse themselves, "and peaceably to depart to their habitations or to their lawful "business, upon the pains contained in the Act made in the "first year of King George the First, for preventing tumults and "riotous assemblies.

"God save the King" (*b*).

Effect of remaining for an hour after proclamation.

22. Further, section 3 provides that if the persons so riotously and tumultuously assembled, or twelve or more of them, remain together for one hour after the proclamation, they may be seized and apprehended by any justice or person assisting him; and that if any of the persons so unlawfully assembled happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting, then the justices, constables, and persons assisting such justices and constables shall be fully indemnified for any such killing, maiming, or hurting. Persons hindering the reading of the proclamation, and if the proclamation be hindered, persons

(*a*) Similar Acts had previously been passed: 3 & 4 Edw. VI, c. 5; 1 Mar. sess. 2, c. 12.
(*b*) In *R.* v. *Child*, 4 C. & P., 442, it was decided that if in reading the proclamation from the Riot Act the magistrates omit to read the words "God save the King" at the end of it, persons remaining together for an hour after such reading of the proclamation cannot be convicted under s. 1 of the Act.

not dispersing within an hour after the hindrance, suffer the same punishment as persons who remain together for an hour after the reading of the proclamation (*a*).

A riot may be dispersed before the proclamation in the Riot Act is read.

23. In the riots excited by Lord George Gordon in 1780, the mob were allowed to proceed to great excesses without any interference by the civil or military authorities; and this appears to have been allowed under the impression that until the proclamation in the Riot Act was read the dispersion of the rioters would be illegal. To correct this impression Lord Loughborough made use of the following language:—

"It has been imagined because the law allows an hour for the "dispersion of a mob to whom the Riot Act has been read (*b*) by "the magistrate, the better to support the civil authority, that "during that period of time the civil power and the magistracy are "disarmed, and the King's subjects, whose duty it is at all times "to suppress riots, are to remain quiet and passive. No such "meaning was within view of the legislature, nor does the opera- "tion of the Act warrant any such effect. The civil magistrates "are left in possession of those powers which the law had given "them before. If the mob collectively, or a part of it, or any "individual, within or before the expiration of that hour attempts "or begins to perpetrate an outrage amounting to felony, to pull "down a house, or by any other act to violate the law, it is the duty "of all present, of whatever description they may be, to endeavour "to stop the mischief and to apprehend the offender" (*c*).

Further observations.

24. This passage shows that the Riot Act does not destroy any power which lawfully existed before its passing for the suppression of riot (*d*). But it also admits the inference that, as a general rule, it would be extremely imprudent to use an armed force against a mob until the proclamation required by the Act has been made and the appointed space of an hour elapsed, except in circumstances where either the proclamation cannot be read owing to the violence of the mob, or the mob, before the expiration of an hour after it has been read, perpetrate or are evidently about to perpetrate some outrage amounting to felony. In every such case, when it arises, the question has to be decided—At what point does the felonious purpose become so manifest as to justify action?

Circumstances which may guide authorities in use of force.

25. Undoubtedly the question is difficult, but many circumstances suggest themselves, which may serve as a guide to justices and officers called on to act in cases of sudden tumult. The first question they will ask themselves is for what purpose has the mob come together? as a knowledge of the purpose of the mob usually furnishes the most certain clue to a determination of the time and mode at and in which forcible interference should take place. For example, a mob assembles for the purpose of pulling down an obstacle to a footpath, which has been obstructed either illegally or with doubtful legality. Their proceedings may be disorderly, but their purpose may be legal, and certainly is not felonious. The probability is that as soon as they have effected their object they will disperse. In such a case, the best course is to use no force, but merely to take means to identify some of the parties concerned, with a view to subsequent proceedings, if necessary.

(*a*) As to punishment under the Riot Act, see 7 Will. IV. and 1 Vict. c. 91, s. 1; 20 & 21 Vict. c. 3, s. 2; 54 & 55 Vict. c. 69, s. 1.

(*b*) This expression, though very common, is not strictly accurate. Not the Act but only the proclamation is required to be read or recited.

(*c*) 21 Howell's State Trials, 193.

(*d*) See Report on Featherstone Riot (Parl. Pap., 1893–94, C. 7234) p. 10, and below, p. 220, Note. See also K.R., para. 955.

Ch. XIII.

Further illustrations.

26. On the other hand, suppose a mob determined to destroy the cotton mill of an obnoxious proprietor They arm themselves with weapons to break open the doors, and they show a settled intention to carry their object into effect. In such a case their intent is felonious, but they should be warned of the danger they will incur in attempting such an outrage, and the proclamation in the Riot Act should, if time allow, be read; and whether it has been read or not, and whether the hour after the reading has or has not expired, the apprehension of the ringleaders, or any other repressive measures which may be necessary to prevent the actual commission of an outrage, should be effected, if possible. Soldiers may be summoned in case the civil authority is in danger of being overpowered, but they should not be called into action till the necessity arises for protecting life and property by military force.

Further illustrations.

27. Take another instance. A meeting assembles in procession with a view to political objects, say the furtherance of Parliamentary reform, the abolition of an obnoxious tax, or any other political object not involving rebellion against the established authority, or a clear intention to enforce by violence the object, though legal, which they have in view. It is, of course, quite possible that excitement may prompt them to outrage, but such a meeting, so long as it commits no act of violence, should be interfered with as little as may be, and no exhibition of force should take place till some violent crime has been or is about to be committed.

In case of insurrection.

28. On the other hand, an assemblage which declares openly that it proposes to attack the constituted authorities, and which consists wholly or partially of armed men; or an attempt like that of the Fenians at Chester in 1867 to seize a castle for the purpose of obtaining arms cannot be too quickly dealt with, and force should be repelled by force, care being taken to avoid any unnecessary bloodshed or injury.

Summary of law as to unlawful assemblies, riots, and insurrections.

29. The conclusions deducible from the foregoing pages appear to be as follows:—

1. Persons attending an unlawful assembly are guilty of a misdemeanour, and the magistrates may, and under certain circumstances ought, to disperse an unlawful assembly.

2. Rioters, before the proclamation contained in the Riot Act has been read and an hour has expired, are guilty of a grave misdemeanour, and may be dispersed by the magistrates. After the proclamation has been read and an hour has expired, all persons riotously continuing together, to the number of twelve or more, become felons, and the Act contains a clause indemnifying the officers and their assistants in case of any of the mob being killed or injured in the endeavour of the officers and their assistants to seize, apprehend, or disperse them.

3. Insurgents, or persons engaged in an insurrection, are guilty of treason, the gravest sort of crime, and it is the duty of the magistrates to take every lawful means to put down an insurrection.

Summary of law as to force to be used.

30. The law which commands the suppression of unlawful assemblies, riots, and insurrections necessarily justifies the civil power in using the necessary degree of force for their suppression. The difficulty is to ascertain what is this necessary degree of force, and the danger of making a mistake in the matter is serious, as any excess in the use of force constitutes a crime.

In case of unlawful assembly.

31. Beginning with an unlawful assembly, it would appear that the police have power to command those present to go away, and to arrest them if they do not go, also to stop others whom

they see joining them (*a*). If the parties interfered with resist, such force may be used as will compel obedience; but it would be extremely inadvisable to use any such force as would maim or injure the person resisting, unless he himself made an attack inflicting, or at all events calculated to inflict, grievous personal injury on his captor.

In case of riot.

32. Proceeding to the case of a riot before the proclamation required by the Riot Act is read, the same observations apply as in the case of an unlawful assembly. After the proclamation has been read and an hour has elapsed, considerable force may, if necessary, be used for the purpose of dispersing the mob. If the mob are committing, or evidently about to commit, some outrage calculated to endanger life or property, then, even before the expiration of the hour after the reading of the proclamation, or even without reading the proclamation at all, force may equally be used. But even then deadly weapons ought not to be employed against the rioters, unless they are armed, or are in a position to inflict grievous injury on the persons endeavouring to disperse them, or are committing, or on the point of committing, some felonious outrage, which can only be stopped by armed force (*b*).

In case of insurrection.

33. The existence of an armed insurrection would justify the use of any degree of force necessary effectually to meet and cope with the insurrection.

Application of preceding observations to troops aiding civil power.

34. Applying the foregoing rules respecting the use of force to soldiers, the following observations occur (*c*). Soldiers, when acting in aid of the civil power, in no respect differ, in the view of the law, from armed citizens. Their organisation prevents their being conveniently employed in using moderate force for the purpose of dispersing or apprehending rioters without doing them any injury; and as a general rule any action on their part involves the risk of inflicting death, or, at all events, grievous bodily harm. Soldiers, therefore, should never be required to act except in cases where the riot cannot reasonably be expected to be quelled without resorting to such means of repression. These cases are practically confined to riots in which violent crimes, such as murder, house-breaking, or arson, are being committed, or are likely to be committed, and to insurrections in which an intention is clearly shown to attempt by force of arms the overthrow of the government, or the execution of some general political purpose (*b*).

Division of responsibility between magistrates and military officer.

35. There remains to be considered the question on whom the responsibility of acting rests in the case of the military being employed in the suppression of disturbances. The primary duty of preserving public order rests with the civil power. An officer, therefore, in all cases where it is practicable, should place himself under the orders of a magistrate. It will be the duty of the magistrate to request the officer "to take action" (*d*). On the other hand, an officer will not perform his duty who, from fear of responsibility, lies by and allows outrages to be committed which it is in his power to check, merely on the ground that there is no magistrate on the spot to give orders to the military (*e*). If the officer and magistrate are acting together, the obligation lies on the magistrate to give orders, and an officer would incur con-

(*a*) Hawkins. Bk. 1, ch. lxv, sec 11.
(*b*) See Report on the Featherstone Riot (Parl. Pap., 1893-94, C. 7234, p. 10), and below, p. 220, Note.
(*c*) The duties of the military in aid of the civil power are laid down in the King's Regulations, paras. 948-968.
(*d*) K.R., paras. 956, 957.
(*e*) K.R., para. 968; such cases are, however, very exceptional.

siderable responsibility by firing without his orders, or refusing to fire in pursuance of his orders. Still, the law of England is that a man obeys an illegal order at his own risk, and circumstances might arise which would justify the officer in firing or not firing, notwithstanding the magistrate might give orders to the contrary (*a*). The magistrate, also, if he acts with discretion, will necessarily defer in military matters to the opinion of an officer, and if he were to give orders to fire upon rioters, although dissuaded by the officer accompanying him he would, as was said in the case of *R.* v. *Pinney*, have great difficulty in defending himself in the event of death occurring, should he be indicted for manslaughter (*b*).

Opinion of Sir Charles Napier.

36. Complaint was made by Sir Charles Napier in his Remarks on Military Law, of the hardship of imposing on an officer the obligation of deciding whether he is or is not justified in ordering his men to act. He contended that an officer ought not to be liable to trial by the ordinary courts of justice for anything he may do in executing the duty imposed on him by the civil magistrate, namely, to quell the riot (*c*).

The answer is, that an officer has no greater responsibility than a civilian. Mr. Justice Littledale, in the case of *R.* v. *Pinney*, says:—

"Now a person, whether a magistrate or a peace officer, who has "the duty of suppressing a riot, is placed in a very difficult situa- "tion, for if by his acts he causes death, he is liable to be indicted "for murder or manslaughter; and if he does not act he is liable "to an indictment or an information for neglect; he is therefore "bound to hit the precise line of his duty, and how difficult "it is to hit that precise line will be matter for your consideration; "but that, difficult as it may be, he is bound to do. Whether a "man has sought a public situation, as is often the case of mayors "and magistrates, or whether as a peace officer he has been com- "pelled to take the office that he holds, the same rule applies, and "if persons were not compelled to act according to law, there would "be an end of society."

At the same time the law has always made liberal allowance for the difficulties of persons so circumstanced, and persons whose intention is honest and upright, and who act with firmness to the best of their judgment, need seldom fear the results of inquiry into their conduct.

NOTE.

Extract from Report of Committee on Featherstone Riot.

The following summary of the law as to the duties of soldiers in case of riot was given in their Report by the Committee who inquired into the facts of the Featherstone Riots in 1893. The Report gains weight from the fact that the Committee was presided over by Lord Bowen. It will be seen that this statement of the law is in complete accord with the present chapter, on which, indeed, it seems to have been founded:—

"By the law of this country every one is bound to aid in the suppression of riotous assemblages. The degree of force, however, which may be used in their suppression

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(*a*) K.R., paras. 957, 958; and Note to this Chap.

(*b*) See *R.* v. *Pinney*, 5 C. & P. 273. "The next thing imputed against the "defendant is that there was a want of energy in his conduct in not ordering the "military to fire upon the rioters. Upon this part of the case it appears that he "was intending to do so, but was dissuaded by Colonel Brereton and also by Major "Mackworth, and if the defendant had given an order to fire upon the rioters, and "death had ensued, he would, upon an indictment for murder or manslaughter, have "had great difficulty to defend himself, if it had appeared that he had given the "order to fire against the advice of two distinguished military officers." As to the liability of subordinates, see ch. VIII, para. 98.

(*c*) Quoted by Clode, Mil. Forces ii, p. 153.

depends on the nature of each riot, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be attained.

"The taking of life can only be justified by the necessity for protecting persons or property against various forms of violent crime, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed, or in the case of persons whose conduct has become felonious through disobedience to the provisions of the Riot Act, and who resist the attempt to disperse or apprehend them. The riotous crowd at the Ackton Hall Colliery was one whose danger consisted in its manifest design violently to set fire and do serious damage to the colliery property, and in pursuit of that object to assault those upon the colliery premises. It was a crowd accordingly which threatened serious outrage, amounting to felony, to property and persons, and it became the duty of all peaceable subjects to assist in preventing this. The necessary prevention of such outrage on person and property justifies the guardians of the peace in the employment against a riotous crowd of even deadly weapons.

"Officers and soldiers are under no special privileges and subject to no special responsibilities as regards this principle of the law. A soldier for the purpose of establishing civil order is only a citizen armed in a particular manner. He cannot because he is a soldier excuse himself if without necessity he takes human life. The duty of magistrates and peace officers to summon or to abstain from summoning the assistance of the military depends in like manner on the necessities of the case. A soldier can only act by using his arms. The weapons he carries are deadly. They cannot be employed at all without danger to life and limb, and, in these days of improved rifles and perfected ammunition, without some risk of injuring distant and possibly innocent bystanders. To call for assistance against rioters from those who can only interpose under such grave conditions ought, of course, to be the last expedient of the civil authorities. But when the call for help is made, and a necessity for assistance from the military has arisen, to refuse such assistance is in law a misdemeanor.

"The whole action of the military when once called in ought, from first to last, to be based on the principle of doing, and doing without fear, that which is absolutely necessary to prevent serious crime, and of exercising all care and skill with regard to what is done. No set of rules exists which governs every instance or defines beforehand every contingency that may arise. One salutary practice is that a magistrate should accompany the troops. The presence of a magistrate on such occasions, although not a legal obligation, is a matter of the highest importance. The military come, it may be, from a distance They know nothing, probably, of the locality, or of the special circumstances. They find themselves introduced suddenly on a field of action, and they need the counsel of the local justice, who is presumably familiar with the details of the case. But, although the magistrate's presence is of the highest value and moment, his absence does not alter the duty of the soldier, nor ought it to paralyse his conduct, but only to render him doubly careful as to the proper steps to be taken. No officer is justified by English law in standing by and allowing felonious outrage to be committed merely because of a magistrate's absence.

"The question whether, on any occasion, the moment has come for firing upon a mob of rioters depends, as we have said, on the necessities of the case. Such firing, to be lawful, must, in the case of a riot like the present, be necessary to stop or prevent such serious and violent crime as we have alluded to; and it must be conducted without recklessness or negligence. When the need is clear, the soldier's duty is to fire with all reasonable caution, so as to produce no further injury than what is absolutely wanted for the purpose of protecting person and property. An order from the magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the magistrate has at law no legal effect. Its presence does not justify the firing if the magistrate is wrong. Its absence does not excuse the officer for declining to fire when the necessity exists.

"With the above doctrines of English law the Riot Act does not interfere. Its effect is only to make the failure of a crowd to disperse for a whole hour after the proclamation has been read a felony; and on this ground to afford a statutory justification for dispersing a felonious assemblage, even at the risk of taking life. In the case of the Ackton Hall Colliery, an hour had not elapsed after what is popularly called the reading of the Riot Act, before the military fired. No justification for their firing can therefore be rested on the provisions of the Riot Act itself, the further consideration of which may indeed be here dismissed from the case. But the fact that an hour had not expired since its reading did not incapacitate the troops from acting when outrage had to be prevented. All their common law duty as citizens and soldiers remained in full force. The justification of Captain Barker and his men must stand or fall entirely by the common law. Was what they did necessary, and no more than was necessary, to put a stop to or prevent felonious crime? In doing it did they exercise all ordinary skill and caution, so as to do no more harm than could be reasonably avoided?

"If these two conditions are made out, the fact that innocent people have suffered does not involve the troops in legal responsibility. A guilty ringleader who under such conditions is shot dead, dies by justifiable homicide. An innocent person killed under such conditions, where no negligence has occurred, dies by an accidental death. The legal reason is not that the innocent person has to thank himself for what has happened, for it is conceivable (though not often likely) that he may have been unconscious of any danger and innocent of all imprudence. The reason is that the soldier who fired has done nothing except what was his strict legal duty."—Parl. Pap. 1893-94, C. 7234.

CHAPTER XIV.

THE LAWS AND CUSTOMS OF WAR ON LAND.

NOTE.

What formerly appeared as Chapter XIV of this work is now out of date, and owing to important questions of international law being at the present time under consideration at the Hague Conference, it has been thought desirable to defer the rewriting of the chapter till the results of the Conference are available.

I.

THE GENEVA CONVENTION, 1864.

For the Amelioration of the Condition of the Wounded in Armies in the Field, August 22, 1864.

Article I.

Les ambulances et les hôpitaux militaires seront reconnus neutres, et, comme tels, protégés et respectés par les belligérants aussi longtemps qu'il s'y trouvera des malades ou des blessés.

La neutralité cesserait si ces ambulances ou ces hôpitaux étaient gardés par une force militaire.

Article II.

Le personnel des hôpitaux et des ambulances, comprenant l'intendance, les services de santé, d'administration, de transport des blessés, ainsi que les aumôniers, participera au bénéfice de la neutralité lorsqu'il fonctionnera, et tant qu'il restera des blessés à relever ou à secourir.

Article III.

Les personnes désignées dans l'Article précédent pourront, même après l'occupation par l'ennemi, continuer à remplir leurs fonctions dans l'hôpital ou l'ambulance qu'elles desservent, ou se retirer pour rejoindre le corps auquel elles appartiennent.

Dans ces circonstances, lorsque ces personnes cesseront leurs fonctions, elles seront remises aux avant-postes ennemis, par les soins de l'armée occupant.

Article IV.

Le matériel des hôpitaux militaires demeurant soumis aux lois de la guerre, les personnes attachées à ces hôpitaux ne pourront, en se retirant, emporter que les objets qui sont leur propriété particulière.

Dans les mêmes circonstances, au contraire, l'ambulance conservera son matériel.

Article V.

Les habitants du pays qui porteront secours aux blessés seront respectés, et demeureront libres. Les Généraux des Puissances belligérantes auront pour mission de prévenir les habitants de l'appel fait à leur humanité, et de la neutralité qui en sera la conséquence.

Tout blessé recueilli et soigné dans une maison y servira de sauvegarde. L'habitant qui aura recueilli chez lui des blessés sera dispensé du logement des troupes, ainsi que d'une partie des contributions de guerre qui seraient imposées.

Article VI.

Les militaires blessés ou malades seront recueillis et soignés, à quelque nation qu'ils appartiendront.

Les Commandants-en-chef auront la faculté de remettre immédiatement aux avant-postes ennemis, les militaires blessés pendant le combat, lorsque les circonstances le permettront, et du consentement des deux partis.

Ch. XIV. Seront renvoyés dans leurs pays ceux qui, après guérison, seront reconnus incapables de servir.

Les autres pourront être également renvoyés, à la condition de ne pas reprendre les armes pendant la durée de la guerre.

Les évacuations, avec le personnel qui les dirige, seront couvertes par une neutralité absolue.

Article VII.

Un drapeau distinctif et uniforme sera adopté pour les hôpitaux, les ambulances, et les évacuations. Il devra être, en toute circonstance, accompagné du drapeau national.

Un brassard sera également admis pour le personnel neutralisé, mais la délivrance en sera laissée à l'autorité militaire.

Le drapeau et le brassard porteront croix rouge sur fond blanc.

Article VIII.

Les détails d'exécution de la présente Convention seront réglés par les Commandants-en-chef des armées belligérantes, d'après les instructions de leurs Gouvernements respectifs, et conformément aux principes généraux énoncés dans cette Convention.

Article IX.

Les Hautes Puissances Contractantes sont convenues de communiquer la présente Convention aux Gouvernements qui n'ont pu envoyer des Plénipotentiaires à la Conférence Internationale de Genève, en les invitant à y accéder ; le Protocole est à cet effet laissé ouvert.

Article X.

La présente Convention sera ratifiée, et les ratifications en seront échangées à Berne, dans l'espace de quatre mois, ou plus tôt si faire se peut.

En foi de quoi les Plénipotentiaires respectifs l'ont signée, et y ont apposé le cachet de leurs armes.

Fait à Genève, le vingt-deuxième jour du mois d'août, de l'an mil huit cent soixante-quatre.

(TRANSLATION.)

Article I.

Ambulances and military hospitals shall be acknowledged to be neutral, and, as such shall be protected and respected by belligerents so long as any sick or wounded may be therein.

Such neutrality shall cease if the ambulances or hospitals should be held by a military force.

Article II.

Persons employed in hospitals and ambulances, comprising the staff for superintendence, medical service, administration, transport of wounded, as well as chaplains, shall participate in the benefit of neutrality whilst so employed, and so long as there remain any wounded to bring in or to succour.

Article III.

The persons designated in the preceding Article may, even after occupation by the enemy, continue to fulfil their duties in the hospital or ambulance which they serve, or may withdraw in order to rejoin the corps to which they belong.

Under such circumstances, when those persons shall cease from their functions, they shall be delivered by the occupying army to the outposts of the enemy.

Article IV.

As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals cannot, in withdrawing, carry away any articles but such as are their private property.

Under the same circumstances an ambulance shall, on the contrary, retain its equipment.

Article V.

Inhabitants of the country who may bring help to the wounded shall be respected, and shall remain free. The Generals of the belligerent Powers shall make it their care to inform the inhabitants of the appeal addressed to their humanity, and of the neutrality which will be the consequence of it.

Any wounded man entertained and taken care of in a house shall be considered as a protection thereto. Any inhabitant who shall have entertained wounded men in his house shall be exempted from the quartering of troops as well as from a part of the contributions of war which may be imposed.

Article VI.

Wounded or sick soldiers shall be entertained and taken care of, to whatever nation they may belong.

Commanders-in-chief shall have the power to deliver immediately to the outposts of the enemy soldiers who have been wounded in an engagement when circumstances permit this to be done, and with the consent of both parties.

Those who are recognised, after their wounds are healed, as incapable of serving, shall be sent back to their country.

The others may also be sent back, on condition of not again bearing arms during the continuance of the war.

Evacuations, together with the persons under whose directions they took place, shall be protected by an absolute neutrality.

Article VII.

A distinctive and uniform flag shall be adopted for hospitals, ambulances, and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (*brassard*) shall also be allowed for individuals neutralised, but the delivery thereof shall be left to military authority.

The flag and the arm-badge shall bear a red cross on a white ground.

Article VIII.

The details of execution of the present Convention shall be regulated by the Commanders-in-chief of belligerent armies, according to the instructions of their respective Governments, and in conformity with the general principles laid down in this Convention.

Ch. XIV.

Article IX.

The High Contracting Powers have agreed to communicate the present Convention to those Governments which have not found it convenient to send Plenipotentiaries to the International Conference at Geneva, with an invitation to accede thereto ; the Protocol is for that purpose left open.

Article X.

The present Convention shall be ratified, and the ratifications shall be exchanged at Berne in four months, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Geneva, the twenty-second day of August, one thousand eight hundred and sixty-four.

II.

THE DECLARATION OF ST. PETERSBURG, 1868.

Renouncing the use, in time of War, of Explosive Projectiles under 400 Grammes Weight.

DÉCLARATION.

Sur la proposition du Cabinet Impérial de Russie, une Commission Militaire Internationale ayant été réunie à St. Pétersbourg, afin d'examiner la convenance d'interdire l'usage de certains projectiles en temps de guerre entre les nations civilisées, et cette Commission ayant fixé d'un commun accord les limites techniques où les nécessités de la guerre doivent s'arrêter devant les exigences de l'humanité, les Soussignés sont autorisés par les ordres de leurs Gouvernements à déclarer ce qui suit :

Considérant que les progrès de la civilization doivent avoir pour effet d'atténuer autant que possible les calamités de la guerre ;

Que le seul but légitime que les États doivent se proposer durant la guerre est l'affaiblissement des forces militaires de l'ennemi ;

Qu'à cet effet, il suffit de mettre hors de combat le plus grand nombre d'hommes possible ;

Que ce but serait dépassé par l'emploi d'armes qui aggraveraient inutilement les souffrances des hommes mis hors de combat, ou rendraient leur mort inévitable ;

Que l'emploi de pareilles armes serait dès lors contraire aux lois de l'humanité ;

Les Parties Contractantes s'engagent à renoncer mutuellement, en cas de guerre entre elles, à l'emploi par leurs troupes de terre ou de mer, de tout projectile d'un poids inférieur à 400 grammes qui serait ou explosible ou chargé de matières fulminantes ou inflammables.

Elles inviteront tous les États qui n'ont pas participé par l'envoi de Délégués aux délibérations de la Commission Militaire Internationale réunie à St. Pétersbourg à accéder au présent engagement.

Cet engagement n'est obligatoire que pour les Parties Contractantes ou Accédantes en cas de guerre entre deux ou plusieurs d'entre elles : il n'est pas applicable vis-à-vis de Parties non-Contractantes ou qui n'auraient pas accédé.

Il cesserait également d'être obligatoire du moment où, dans une guerre entre Parties Contractantes ou Accédantes, une partie non-Contractante ou qui n'aurait pas accédé se joindrait à l'un des belligérants.

Les Parties Contractantes ou Accédantes se réservent de s'entendre ultérieurement toutes les fois qu'une proposition précise serait formulée en vue des perfectionnements à venir que la science pourrait apporter dans l'armement des troupes, afin de maintenir les principes qu'elles ont posés et de concilier les nécésssités de la guerre avec les lois de l'humanité.

Fait à St. Pétersbourg, le vingt-neuf Novembre / onze Décembre, mil huit cent soixante-huit.

(TRANSLATION.)

Declaration.

On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburgh in order to examine into the expediency of forbidding the use of certain projectiles in times of war between civilized nations, and that Commission, having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows :—

Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war ;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy ;

That for this purpose it is sufficient to disable the greatest possible number of men ;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable ;

That the employment of such arms would, therefore, be contrary to the laws of humanity ;

The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburgh, by sending Delegates thereto, to accede to the present engagement.

This engagement is obligatory only upon the Contracting or Acceding Parties thereto, in case of war between two or more of themselves : it is not applicable with regard to non-Contracting Parties, or Parties who shall not have acceded to it.

It will also cease to be obligatory from the moment when, in a war between Contracting or Acceding Parties, a non-Contracting Party or a non-Acceding Party shall join one of the belligerents.

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the

Ch. XIV. principles which they have established, and to conciliate the necessities of war with the laws of humanity.

Done at St. Petersburgh, the twenty-ninth of November / eleventh of December, one thousand eight hundred and sixty-eight.

III.

REGULATIONS ANNEXED TO THE HAGUE CONVENTION, 1899, RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND.

ANNEXE À LA CONVENTION.

Règlement concernant les Lois et Coutumes de la Guerre sur Terre.

SECTION I.—DES BELLIGÉRANTS.

Chapitre I.—De la Qualité de Belligérant.

Article I.

LES lois, les droits, et les devoirs de la guerre ne s'appliquent pas seulement à l'armée, mais encore aux milices et aux corps de volontaires réunissant les conditions suivantes :—

1. D'avoir à leur tête une personne responsable pour ses subordonnés ;
2. D'avoir un signe distinctif fixe et reconnaissable à distance ;
3. De porter les armes ouvertement ; et
4. De se conformer dans leurs opérations aux lois et coutumes de la guerre.

Dans les pays où les milices ou des corps de volontaires constituent l'armée ou en font partie, ils sont compris sous la dénomination "d'armée."

Article II.

La population d'un territoire non occupé qui, à l'approche de l'ennemi, prend spontanément les armes pour combattre les troupes d'invasion sans avoir eu le temps de s'organiser conformément à l'Article Ier, sera considérée comme belligérante si elle respecte les lois et coutumes de la guerre.

Article III.

Les forces armées des parties belligérantes peuvent se composer de combattants et de non-combattants. En cas de capture par l'ennemi, les uns et les autres ont droit au traitement des prisonniers de guerre.

Chapitre II.—Des Prisonniers de Guerre.

Article IV.

Les prisonniers de guerre sont au pouvoir du Gouvernement ennemi, mais non des individus ou des corps qui les ont capturés.

Ils doivent être traités avec humanité.

Tout ce qui leur appartient personellement, excepté les armes, les chevaux, et les papiers militaires, reste leur propriété.

Article V.

Les prisonniers de guerre peuvent être assujettis à l'internement dans une ville, forteresse, camp, ou localité quelconque, avec obligation de ne pas s'en éloigner au delà de certaines limites déterminées ; mais ils ne peuvent être enfermés que par mesure de sûreté indispensable.

Article VI.

L'État peut employer, comme travailleurs, les prisonniers de guerre, selon leur grade et leurs aptitudes. Ces travaux ne seront pas excessifs et n'auront aucun rapport avec les opérations de la guerre.

Les prisonniers peuvent être autorisés à travailler pour le compte d'Administrations Publiques ou de particuliers, ou pour leur proper compte.

Les travaux fait pour l'État sont payés d'après les tarifs en vigueur pour les militaires de l'armée nationale exécutant les mêmes travaux.

Lorsque les travaux ont lieu pour le compte d'autres Administrations Publiques ou pour des particuliers, les conditions en sont réglées d'accord avec l'autorité militaire.

Le salaire des prisonniers contribuera à adoucir leur position, et le surplus leur sera compté au moment de leur libération, sauf défalcation des frais d'entretien.

Article VII.

Le Gouvernement au pouvoir duquel se trouvent les prisonniers de guerre est chargé de leur entretien.

A défaut d'une entente spéciale entre les belligérants, les prisonniers de guerre seront traités, pour la nourriture, le couchage, et l'habillement, sur le même pied que les troupes du Gouvernement qui les aura capturés.

Article VIII.

Les prisonniers de guerre seront soumis aux lois, règlements, et ordres en vigueur dans l'armée de l'État au pouvoir duquel ils se trouvent.

Tout acte d'insubordination autorise, à leur égard, les mesures de rigueur nécessaires.

Les prisonniers évadés, qui seraient repris avant d'avoir pu rejoindre leur armée ou avant de quitter le territoire occupé par l'armée qui les aura capturés, sont passibles de peines disciplinaires.

Les prisonniers qui, après avoir réussi à s'évader, sont de nouveau faits prisonniers, ne sont passibles d'aucune peine pour la fuite antérieure.

Article IX.

Chaque prisonnier de guerre est tenu de déclarer, s'il est interrogé à ce sujet, ses véritables noms et grade et, dans le cas où il enfreindrait cette règle, il s'exposerait à une restriction des avantages accordés aux prisonniers de guerre de sa catégorie.

Article X.

Les prisonniers de guerre peuvent être mis en liberté sur parole, si les lois de leur pays les y autorisent, et, en pareil cas, ils sont obligés, sous la garantie de leur honneur personnel, de remplir scrupuleusement, tant vis-à-vis de leur propre Gouvernement que vis-à-vis de celui qui les a faits prisonniers, les engagements qu'ils auraient contractés.

Ch. XIV. Dans le même cas, leur propre Gouvernement est tenu de n'exiger ni accepter d'eux aucun service contraire à la parole donnée.

Article XI.

Un prisonnier de guerre ne peut être contraint d'accepter sa liberté sur parole ; de même le Gouvernement ennemi n'est pas obligé d'accéder à la demande du prisonnier réclamant sa mise en liberté sur parole.

Article XII.

Tout prisonnier de guerre, libéré sur parole et repris portant les armes contre le Gouvernement envers lequel il s'était engagé d'honneur, ou contre les alliés de celui-ci, perd le droit au traitement des prisonniers de guerre et peut être traduit devant les Tribunaux.

Article XIII.

Les individus qui suivent une armée sans en faire directement partie, tels que les correspondants et les reporters de journaux, les vivandiers, les fournisseurs, qui tombent au pouvoir de l'ennemi et que celui-ci juge utile de détenir, ont droit au traitement des prisonniers de guerre, à condition qu'ils soient munis d'une légitimation de l'autorité militaire de l'armée qu'ils accompagnaient.

Article XIV.

Il est constitué, dès le début des hostilités, dans chacun des États belligérants et, le cas échéant, dans les pays neutres qui auront recueilli des belligérants sur leur territoire, un bureau de renseignements sur les prisonniers de guerre. Ce bureau, chargé de répondre à toutes les demandes qui les concernent, reçoit des divers services compétents toutes les indications nécessaires pour lui permettre d'établir une fiche individuelle pour chaque prisonnier de guerre. Il est tenu au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès.

Le Bureau de Renseignements est également chargé de recueillir et de centraliser tous les objets d'un usage personnel, valeurs, lettres, &c., qui seront trouvés sur les champs de bataille ou délaissés par des prisonniers décédés dans les hôpitaux et ambulances, et de les transmettre aux intéressés.

Article XV.

Les Sociétés de Secours pour les prisonniers de guerre, régulièrement constituées selon la loi de leur pays et ayant pour objet d'être les intermédiaires de l'action charitable, recevront, de la part des belligérants, pour elles et pour leurs agents dûment accrédités, toute facilité, dans les limites tracées par les nécessités militaires et les règles administratives, pour accomplir efficacement leur tâche d humanité. Les Délégués de ces Sociétés pourront être admis à distribuer des secours dans les dépôts d'internement, ainsi qu'aux lieux d'étape des prisonniers rapatriés, moyennant une permission personnelle délivrée par l'autorité militaire, et en prenant l'engagement par écrit de se soumettre à toutes les mesures d'ordre et de police que celle-ci prescrirait.

Article XVI.

Les Bureaux de Renseignements jouissent de la franchise de port. Les lettres, mandats, et articles d'argent, ainsi que les colis postaux destinés aux prisonniers de guerre ou expédiés par eux,

seront affranchis de toutes taxes postales, aussi bien dans les pays d'origine et de destination que dans les pays intermédiaires.

Les dons et secours en nature destinés aux prisonniers de guerre seront admis en franchise de tous droits d'entrée et autres, ainsi que des taxes de transport sur les chemins de fer exploités par l'État.

Article XVII.

Les officiers prisonniers pourront recevoir le complément, s'il y a lieu, de la solde qui leur est attribuée dans cette situation par les Règlements de leur pays, à charge de remboursement par leur Gouvernement.

Article XVIII.

Toute latitude est laissée aux prisonniers de guerre pour l'exercice de leur religion, y compris l'assistance aux offices de leur culte, à la seule condition de se conformer aux mesures d'ordre et de police prescrites par l'autorité militaire.

Article XIX.

Les testaments des prisonniers de guerre sont reçus ou dressés dans les mêmes conditions que pour les militaires de l'armée nationale.

On suivra également les mêmes règles en ce qui concerne les pièces relatives à la constatation des décès, ainsi que pour l'inhumation des prisonniers de guerre, en tenant compte de leur grade et de leur rang.

Article XX.

Après la conclusion de la paix, le rapatriement des prisonniers de guerre s'effectuera dans le plus bref délai possible.

Chapitre III.—Des Malades et des Blessés.

Article XXI.

Les obligations des belligérants concernant le service des malades et des blessés sont régies par la Convention de Genève du 22 Août, 1864, sauf les modifications dont celle-ci pourra être l'objet.

SECTION II.—DES HOSTILITÉS.

Chapitre I.—Des moyens de nuire à l'Ennemi, des Sièges et des Bombardements.

Article XXII.

Les belligérants n'ont pas un droit illimité quant au choix des moyens de nuire à l'ennemi.

Article XXIII.

Outre les prohibitions établies par des Conventions spéciales, il est notamment interdit :—

(*a*) D'employer du poison ou des armes empoisonnées ;

(*b*) De tuer ou de blesser par trahison des individus appartenant à la nation ou à l'armée ennemie ;

(*c*) De tuer ou de blesser un ennemi qui, ayant mis bas les armes ou n'ayant plus les moyens de se défendre, s'est rendu à discrétion ;

(*d*) De déclarer qu'il ne sera pas fait de quartier ;

Ch. XIV.

(*e*) D'employer des armes, des projectiles, ou des matières propres à causer des maux superflus ;

(*f*) D'user indûment du pavillon parlementaire, du pavillon national, ou des insignes militaires et de l'uniforme de l'ennemi, ainsi que des signes distinctifs de la Convention de Genève ;

(*g*) De détruire ou de saisir des propriétés ennemies, sauf les cas où ces destructions ou ces saisies seraient impérieusement commandées par les nécessités de la guerre.

Article XXIV.

Les ruses de guerre et l'emploi des moyens nécessaires pour se procurer des renseignements sur l'ennemi et sur le terrain sont considérés comme licites.

Article XXV.

Il est interdit d'attaquer ou de bombarder des villes, villages, habitations, ou bâtiments qui ne sont pas défendus.

Article XXVI.

Le Commandant des troupes assaillantes, avant d'entreprendre le bombardement, et sauf le cas d'attaque de vive force, devra faire tout ce qui dépend de lui pour en avertir les autorités.

Article XXVII.

Dans les sièges et bombardements, toutes les mesures nécessaires doivent être prises pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences, et à la bienfaisance, les hôpitaux et les lieux de rassemblement de malades et de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.

Le devoir des assiégés est de désigner ces édifices ou lieux de rassemblement par des signes visibles spéciaux qui seront notifiés d'avance à l'assiégeant.

Article XXVIII.

Il est interdit de livrer au pillage même une ville ou localité prise d'assaut.

Chapitre II.—Des Espions.

Article XXIX.

Ne peut être considéré comme espion que l'individu qui, agissant clandestinement ou sous de faux prétextes, recueille ou cherche à recueillir des informations dans la zone d'opérations d'un belligérant, avec l'intention de les communiquer à la partie adverse.

Ainsi les militaires non déguisés qui ont pénétré dans la zone d'opérations de l'armée ennemie, à l'effet de recueillir des informations, ne sont pas considérés comme espions : les militaires et les non-militaires, accomplissant ouvertement leur mission, chargés de transmettre des dépêches destinées soit à leur propre armée, soit à l'armée ennemie. A cette catégorie appartiennent également les individus envoyés en ballon pour transmettre les dépêches, et en général, pour entretenir les communications entre les diverses parties d'une armée ou d'un territoire.

Article XXX.

L'espion pris sur le fait ne pourra être puni sans jugement préalable.

Article XXXI.

L'espion qui, ayant rejoint l'armée à laquelle il appartient, est capturé plus tard par l'ennemi, est traité comme prisonnier de guerre et n'encourt aucune responsabilité pour ses actes d'espionnage antérieurs.

Chapitre III.—Des Parlementaires.

Article XXXII

Est considéré comme parlementaire l'individu autorisé par l'un des belligérants à entrer en pourparlers avec l'autre et se présentant avec le drapeau blanc. Il a droit à l'inviolabilité ainsi que le trompette, clairon, ou tambour, le porte-drapeau et l'interprète qui l'accompagneraient.

Article XXXIII.

Le Chef auquel un parlementaire est expédié n'est pas obligé de le recevoir en toutes circonstances.

Il peut prendre toutes les mesures nécessaires afin d'empêcher le parlementaire de profiter de sa mission pour se renseigner.

Il a le droit, en cas d'abus, de retenir temporairement le parlementaire.

Article XXXIV.

Le parlementaire perd ses droits d'inviolabilité, s'il est prouvé, d'une manière positive et irrécusable, qu'il a profité de sa position privilégiée pour provoquer ou commettre un acte de trahison.

Chapitre IV.—Des Capitulations.

Article XXXV.

Les Capitulations arrêtées entre les Parties Contractantes doivent tenir compte des règles de l'honneur militaire.

Une fois fixées, elles doivent être scrupuleusement observées par les deux parties.

Chapitre V.—De l'Armistice.

Article XXXVI.

L'armistice suspend les opérations de guerre par un accord mutuel des parties belligérantes. Si la durée n'en est pas déterminée, les parties belligérantes peuvent reprendre en tout temps les opérations, pourvu toutefois que l'ennemi soit averti en temps convenu, conformément aux conditions de l'armistice.

Article XXXVII.

L'armistice peut être général ou local. Le premier suspend partout les opérations de guerre des États belligérants; le second, seulement entre certaines fractions des armées belligérantes et dans un rayon déterminé.

Article XXXVIII.

L'armistice doit être notifié officiellement et en temps utile aux autorités compétentes et aux troupes. Les hostilités sont suspendues immédiatement après la notification ou au terme fixé.

Article XXXIX.

Il dépend des Parties Contractantes de fixer, dans les clauses de l'armistice, les rapports qui pourraient avoir lieu, sur le théâtre de la guerre, avec les populations et entre elles.

Article XL.

Toute violation grave de l'armistice, par l'une des parties, donne à l'autre le droit de le dénoncer et même, en cas d'urgence, de reprendre immédiatement les hostilités.

Article XLI.

La violation des clauses de l'armistice par des particuliers agissant de leur propre initiative, donne droit seulement à réclamer la punition des coupables et, s'il y a lieu, une indemnité pour les pertes éprouvées.

SECTION III.—DE L'AUTORITE MILITAIRE SUR LE TERRITOIRE LE L'ÉTAT ENNEMI.

Article XLII.

Un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de l'armée ennemie.

L'occupation ne s'étend qu'aux territoires où cette autorité est établie et en mesure de s'exercer.

Article XLIII.

L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publics en respectant, sauf empêchement absolu, les lois en vigueur dans le pays.

Article XLIV.

Il est interdit de forcer la population d'un territoire occupé à prendre part aux opérations militaires contre son propre pays.

Article XLV.

Il est interdit de contraindre la population d'un territoire occupé à prêter serment à la Puissance ennemie.

Article XLVI.

L'honneur et les droits de la famille, la vie des individus et la propriété privée, ainsi que les convictions religieuses et l'exercice des cultes, doivent être respectés.

La propriété privée ne peut pas être confisquée.

Article XLVII.

Le pillage est formellement interdit.

Article XLVIII.

Si l'occupant prélève, dans le territoire occupé, les impôts, droits et péages établis au profit de l'État, il le fera, autant que possible, d'après les règles de l'assiette et de la répartition en vigueur, et il en résultera pour lui l'obligation de pourvoir aux frais de l'administration du territoire occupé dans la mesure où le Gouvernement légal y était tenu.

Article XLIX.

Si, en dehors des impôts visés à l'Article précédent, l'occupant prélève d'autres contributions en argent dans le territoire occupé, ce ne pourra être que pour les besoins de l'armée ou de l'administration de ce territoire.

Article L.

Aucune peine collective, pécuniaire ou autre, ne pourra être édictée contre les populations à raison de faits individuels dont elles ne pourraient être considérées comme solidairement responsables.

Article LI.

Aucune contribution ne sera perçue qu'en vertu d'un ordre écrit et sous la responsabilité d'un Général-en-chef.

Il ne sera procédé, autant que possible, à cette perception que d'après les règles de l'assiette et de la répartition des impôts en vigueur.

Pour toute contribution un reçu sera délivré aux contribuables.

Article LII.

Des réquisitions en nature et des services ne pourront être réclamés des communes ou des habitants, que pour les besoins de l'armée d'occupation. Ils seront en rapport avec les ressources du pays et de telle nature qu'ils n'impliquent pas pour les populations l'obligation de prendre part aux opérations de la guerre contre leur patrie.

Ces réquisitions et ces services ne seront réclamés qu'avec l'autorisation du Commandant dans la localité occupée.

Les prestations en nature seront, autant que possible, payées au comptant ; sinon elles seront constatées par des reçus.

Article LIII.

L'armée qui occupe un territoire ne pourra saisir que le numéraire, les fonds et les valeurs exigibles appartenant en propre à l'État, les dépôts d'armes, moyens de transport, magasins et approvisionnements et, en général, toute propriété mobilière de l'État de nature à servir aux opérations de la guerre.

Le matériel des chemins de fer, les télégraphes de terre, les téléphones, les bateaux à vapeur et autres navires, en dehors des cas régis par la loi maritime, de même que les dépôts d'armes et en général toute espèce de munitions de guerre, même appartenant à des Sociétés ou à des personnes privées, sont également des moyens de nature à servir aux opérations de la guerre, mais devront être restitués, et les indemnités seront réglées à la paix.

Article LIV.

Le matériel des chemins de fer provenant d'États neutres, qu'il appartienne a ces États ou à des Sociétés ou personnes privées, leur sera renvoyé aussitôt que possible.

Article LV.

L'État occupant ne se considérera que comme administrateur et usufruitier des édifices publics, immeubles, forêts et exploitations agricoles appartenant à l'État ennemi et se trouvant dans le pays occupé. Il devra sauvegarder le fonds de ces propriétés et les administrer conformément aux règles de l'usufruit.

Article LVI.

Les biens des communes, ceux des établissements consacrés aux cultes, à la charité et à l'instruction, aux arts et aux sciences, même appartenant à l'État, seront traités comme la propriété privée.

Toute saisie, destruction ou dégradation intentionnelle de semblables établissements, de monuments historiques, d'œuvres d'art et de science, est interdite et doit être poursuivie.

SECTION IV.—DES BELLIGÉRANTS INTERNES ET DES BLESSÉS SOIGNÉS CHEZ LES NEUTRES.

Article LVII.

L'État neutre qui reçoit sur son territoire des troupes appartenant aux armées belligérantes, les internera, autant que possible, loin du théâtre de la guerre.

Il pourra les garder dans des camps, et même les enfermer dans des forteresses ou dans des lieux appropriés à cet effet.

Il décidera si les officiers peuvent être laissés libres en prenant l'engagement sur parole de ne pas quitter le territoire neutre sans autorisation.

Article LVIII.

A défaut de Convention spéciale, l'État neutre fournira aux internés les vivres, les habillements, et les secours commandés par l'humanité.

Bonification sera faite, à la paix, des frais occasionnés par l'internement.

Article LIX.

L'Etat neutre pourra autoriser le passage sur son territoire des blessés ou malades appartenant aux armées belligérantes, sous la réserve que les trains qui les amèneront ne transporteront ni personnel ni matériel de guerre. En pareil cas, l'État neutre est tenu de prendre les measures de sûreté et de contrôle nécessaires à cet effet.

Les blessés ou malades amenés dans ces conditions sur le territoire neutre par un des belligérants, et qui appartiendraient à la partie adverse, devront être gardés par l'État neutre, de manière qu'ils ne puissent de nouveau prendre part aux opérations de la guerre. Celui-ci aura les mêmes devoirs quant aux blessés ou malades de l'autre armée qui lui seraient confiés.

Article LX.

La Convention de Genève s'applique aux malades et aux blessés internés sur territoire neutre.

(TRANSLATION.)

ANNEX TO THE CONVENTION.

Regulations respecting the Laws and Customs of War on Land.

SECTION I.—ON BELLIGERENTS.

Chapter I.—ON THE QUALIFICATIONS OF BELLIGERENTS.

Article I.

THE laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps, fulfilling the following conditions :—

1. To be commanded by a person responsible for his subordinates ;

2. To have a fixed distinctive emblem recognizable at a distance :

3. To carry arms openly; and

4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the Army, or form part of it, they are included under the denomination "army."

Article II.

The population of a territory which has not been occupied who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having time to organize themselves in accordance with Article I, shall be regarded a belligerent, if they respect the laws and customs of war.

Article III.

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy both have a right to be treated as prisoners of war.

Chapter II.—On Prisoners of War.

Article IV.

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

Article V.

Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety.

Article VI.

The State may utilize the labour of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with the military operations.

Prisoners may be authorized to work for the Public Service, for private persons, or on their own account.

Work done for the State shall be paid for according to the tariffs in force for soldiers of the national army employed on similar tasks.

When the work is for other branches of the Public Service or for private persons, the conditions shall be settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

Article VII.

The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

Article VIII.

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen.

Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Escaped prisoners, recaptured before they have succeeded in rejoining their army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

Article IX.

Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

Article X.

Prisoners of war may be set at liberty on parole if the laws of their country authorize it, and, in such a case, they are bound, on their personal honour, scrupulously to fulfil, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases, their own Government shall not require of nor accept from them any service incompatible with the parole given.

Article XI.

A prisoner of war cannot be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole.

Article XII.

Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom he had pledged his honour, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts.

Article XIII.

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying.

Article XIV.

A Bureau for information relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and is furnished by the various services concerned with all the necessary information to enable it to keep an individual return for each prisoner of war. It is kept informed of internments and changes, as well as of admissions into hospital and deaths.

It is also the duty of the Information Bureau to receive and collect all objects of personal use, valuables, letters, &c., found on the battlefields or left by prisoners who have died in hospital or ambulance, and to transmit them to those interested.

Article XV.

Relief Societies for prisoners of war, which are regularly constituted in accordance with the law of the country with the object of serving as the intermediary for charity, shall receive from the belligerents for themselves and their duly accredited agents every facility, within the bounds of military requirements and Administrative Regulations, for the effective accomplishment of their humane task. Delegates of these Socities may be admitted to the places of internment for the distribution of relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all their Regulations for order and police.

Article XVI.

The Information Bureau shall have the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or dispatched by them, shall be free of all postal duties, both in the countries of origin and destination, as well as in those they pass through.

Gifts and relief in kind for prisoners of war shall be admitted free of all duties of entry and others, as well as of payments for carriage by the Government railways.

Article XVII.

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government.

Article XVIII.

Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.

Article XIX.

The wills of prisoners of war are received or drawn up on the same conditions as for soldiers of the national army.

The same rules shall be observed regarding death certificates, as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

Article XX.

After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible.

Chapter III.—On the Sick and Wounded.

Article XXI.

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of the 22nd August, 1864, subject to any modifications which may be introduced into it.

SECTION II.—ON HOSTILITIES.

Chapter I.—On means of injuring the Enemy, Sieges, and Bombardments.

Article XXII.

The right of belligerents to adopt means of injuring the enemy is not unlimited.

Article XXIII.

Besides the prohibitions provided by special Conventions, it is especially prohibited :—

(*a.*) To employ poison or poisoned arms ;

(*b.*) To kill or wound treacherously individuals belonging to the hostile nation or army ;

(*c.*) To kill or wound an enemy who, having laid down arms, or having no longer means of defence, has surrendered at discretion ;

(*d.*) To declare that no quarter will be given ;

(*e.*) To employ arms, projectiles, or material of a nature to cause superfluous injury ;

(*f.*) To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges of the Geneva Convention ;

(*g.*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

Article XXIV.

Ruses of war and the employment of methods necessary to obtain information about the enemy and the country, are considered allowable.

Article XXV.

The attack or bombardment of towns, villages, habitations or buildings which are not defended, is prohibited.

Article XXVI.

The Commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

Article XXVII.

In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.

Article XXVIII.

The pillage of a town or place, even when taken by assault, is prohibited.

Chapter II.—On Spies.

Article XXIX.

An individual can only be considered a spy if, acting clandestinely, or on false pretences, he obtains, or seeks to obtain information in

the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers or civilians, carrying out their mission openly, charged with the delivery of despatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches, and generally to maintain communication between the various parts of an army or a territory.

Article XXX.

A spy taken in the act cannot be punished without previous trial.

Article XXXI.

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

Chapter III.—On Flags of Truce

Article XXXII.

An individual is considered as bearing a flag of truce who is authorized by one of the belligerents to enter into communication with the other, and who carries a white flag. He has a right to inviolability, as well as the trumpeter, bugler, or drummer, the flag-bearer, and the interpreter who may accompany him.

Article XXXIII.

The Chief to whom a flag of truce is sent is not obliged to receive it in all circumstances.

He can take all steps necessary to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

Article XXXIV.

The envoy loses his rights of inviolability if it is proved beyond doubt that he has taken advantage of his privileged position to provoke or commit an act of treachery.

Chapter IV.—On Capitulations.

Article XXXV.

Capitulations agreed on between the Contracting Parties must be in accordance with the rules of military honour.

When once settled, they must be scrupulously observed by both the parties.

Chapter V.—On Armistices.

Article XXXVI.

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Article XXXVII.

An armistice may be general or local. The first suspends all military operations of the belligerent States; the second, only those between certain fractions of the belligerent armies and in a fixed radius.

Article XXXVIII.

An armistice must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.

Article XXXIX.

It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the population and with each other.

Article XL.

Any serious violation of the armistice by one of the parties gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.

Article XLI.

A violation of the terms of the armistice by private individuals acting on their own initiative, only confers the right of demanding the punishment of the offenders, and, if necessary, indemnity for the losses sustained.

Section III.—On Military Authority over Hostile Territory.

Article XLII.

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation applies only to the territory where such authority is established, and in a position to assert itself.

Article XLIII.

The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Article XLIV.

Any compulsion of the population of occupied territory to take part in military operations against its own country is prohibited.

Article XLV.

Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited.

Article XLVI.

Family honours and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.

Private property cannot be confiscated.

Article XLVII.

Pillage is formally prohibited.

Article XLVIII.

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do it, as far as possible, in accordance with the rules in existence and the assessment in force, and will in consequence be bound to defray the expenses of the administration of the occupied territory on the same scale as that by which the legitimate Government was bound.

Article XLIX.

If, besides the taxes mentioned in the preceding Article, the occupant levies other money taxes in the occupied territory, this can only be for military necessities or the administration of such territory.

Article L.

No general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

Article LI.

No tax shall be collected except under a written order and on the responsibility of a Commander-in-chief.

This collection shall only take place, as far as possible, in accordance with the rules in existence and the assessment of taxes in force.

For every payment a receipt shall be given to the taxpayer.

Article LII.

Neither requisitions in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country.

These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.

The contributions in kind shall, as far as possible, be paid for in ready money ; if not, their receipt shall be acknowledged.

Article LIII.

An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

Railway plant, land telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depôts of arms and, generally, all kinds of war material, even though belonging to Companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them.

Article LIV.

The plant of railways coming from neutral States, whether the property of those States, or of Companies, or of private persons, shall be sent back to them as soon as possible.

Article LV.

The occupying State shall only be regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct.

Article LVI.

The property of the communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings.

SECTION IV.—ON THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL COUNTRIES.

Article LVII.

A neutral State which receives in its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It can keep them in camps, and even confine them in fortresses or localities assigned for this purpose.

It shall decide whether officers may be left at liberty on giving their parole that they will not leave the neutral territory without authorization.

Article LVIII.

Failing a special Convention, the neutral State shall supply the interned with the food, clothing and relief required by humanity.

At the conclusion of peace, the expenses caused by the internment shall be made good.

Article LIX.

A neutral State may authorize the passage through its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants nor war material. In such a case, the neutral State is bound to adopt such measures of safety and control as may be necessary for the purpose.

Wounded and sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

Article LX.

The Geneva Convention applies to sick and wounded interned in neutral territory.

IV.

THE GENEVA CONVENTION, 1906.

For the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.

Chapitre Premier.—Des Blessés et Malades.

Article Premier.

Les militaires et les autres personnes officiellement attachées aux armées, qui seront blessés ou malades, devront être respectés et soignés, sans distinction de nationalité, par le belligérant qui les aura en son pouvoir.

Toutefois le belligérant, obligé d'abandonner des malades ou des blessés à son adversaire, laissera avec eux, autant que les circonstances militaires le permettront, une partie de son personnel et de son matériel sanitaires pour contribuer à les soigner.

Article 2.

Sous réserve des soins à leur fournir en vertu de l'article précédent, les blessés ou malades d'une armée tombés au pouvoir de l'autre belligérant sont prisonniers de guerre et les règles générales du droit des gens concernant les prisonniers leur sont applicables.

Cependant, les belligérants restent libres de stipuler entre eux, à l'égard des prisonniers blessés ou malades, telles clauses d'exception ou de faveur qu'ils jugeront utiles ; ils auront, notamment, la faculté de convenir :

De se remettre réciproquement, après un combat, les blessés laissés sur le champ de bataille ;

De renvoyer dans leur pays, après les avoir mis en état d'être transportés ou après guérison, les blessés ou malades qu'ils ne voudront pas garder prisonniers ;

De remettre à un État neutre, du consentement de celui-ci, des blessés ou malades de la partie adverse, à la charge par l'État neutre de les interner jusqu'à la fin des hostilités.

Article 3.

Après chaque combat, l'occupant du champ de bataille prendra des mesures pour rechercher les blessés et pour les faire protéger, ainsi que les morts, contre le pillage et les mauvais traitements.

Il veillera à ce que l'inhumation ou l'incinération des morts soit précédée d'un examen attentif de leurs cadavres.

Article 4.

Chaque belligérant enverra, dès qu'il sera possible, aux autorités de leur pays ou de leur armée les marques ou pièces militaires d'identité trouvées sur les morts et l'état nominatif des blessés ou malades recueillis par lui.

Les belligérants se tiendront réciproquement au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès survenus parmi les blessés et malades en leur pouvoir. Ils recueilleront tous les objets d'un usage personnel, valeurs, lettres, etc., qui seront trouvés sur les champs de bataille ou délaissés par les blessés ou malades décédés dans les établissements et formations sanitaires, pour les faire transmettre aux intéressés par les autorités de leur pays.

Article 5.

L'autorité militaire pourra faire appel au zèle charitable des habitants pour recueillir et soigner, sous son contrôle, des blessés ou malades des armées, en accordant aux personnes ayant répondu à cet appel une protection spéciale et certaines immunités.

Chapitre II.—Des Formations et Établissements Sanitaires.

Article 6.

Les formations sanitaires mobiles (c'est-à-dire celles qui sont destinées à accompagner les armées en campagne) et les établissements fixes du service de santé seront respectés et protégés par les belligérants.

Article 7.

La protection due aux formations et établissements sanitaires cesse si l'on en use pour commettre des actes nuisibles à l'ennemi.

Ch. XIV.

Article 8.

Ne sont pas considérés comme étant de nature à priver une formation ou un établissement sanitaire de la protection assurée par l'article 6 :

1°. Le fait que le personnel de la formation ou de l'établissement est armé et qu'il use de ses armes pour sa propre défense ou celle de ses malades et blessés ;

2°. Le fait qu'à défaut d'infirmiers armés, la formation ou l'établissement est gardé par un piquet ou des sentinelles munis d'un mandat régulier ;

3°. Le fait qu'il est trouvé dans la formation ou l'établissement des armes et cartouches retirées aux blessés et n'ayant pas encore été versées au service compétent.

Chapitre III.—Du Personnel.

Article 9.

Le personnel exclusivement affecté à l'enlèvement, au transport et au traitement des blessés et des malades, ainsi qu'à l'administration des formations et établissements sanitaires, les aumôniers attachés aux armées, seront respectés et protégés en toute circonstance ; s'ils tombent entres les mains de l'ennemi, ils ne seront pas traités comme prisonniers de guerre.

Ces dispositions s'appliquent au personnel de garde des formations et établissements sanitaires dans le cas prévu à l'article 8, n° 2.

Article 10.

Est assimilé au personnel visé à l'article précédent le personnel des Sociétés de secours volontaires dûment reconnues et autorisées par leur Gouvernement, qui sera employé dans les formations et établissements sanitaires des armées, sous la réserve que ledit personnel sera soumis aux lois et règlements militaires.

Chaque État doit notifier à l'autre soit dès le temps de paix, soit à l'ouverture ou au cours des hostilités, en tout cas avant tout emploi effectif, les noms des Sociétés qu'il a autorisées à prêter leur concours, sous sa responsabilité, au service sanitaire officiel de ses armées.

Article 11.

Une Société reconnue d'un pays neutre ne peut prêter le concours de ses personnels et formations sanitaires à un belligérant qu'avec l'assentiment préalable de son propre Gouvernement et l'autorisation du belligérant lui-même.

Le belligérant qui a accepté le secours est tenu, avant tout emploi, d'en faire la notification à son ennemi.

Article 12.

Les personnes désignées dans les articles 9, 10 et 11 continueront, après qu'elles seront tombées au pouvoir de l'ennemi, à remplir leurs fonctions sous sa direction.

Lorsque leur concours ne sera plus indispensable, elles seront renvoyées à leur armée ou à leur pays dans les délais et suivant l'itinéraire compatibles avec les nécessités militaires.

Elles emporteront, alors, les effets, les instruments, les armes et les chevaux qui sont leur propriété particulière.

Article 13.

L'ennemi assurera au personnel visé par l'article 9, pendant qu'il sera en son pouvoir, les mêmes allocations et la même solde qu'au personnel des mêmes grades de son armée.

Chapitre IV.—Du Matériel.

Article 14.

Les formations sanitaires mobiles conserveront, si elles tombent au pouvoir de l'ennemi, leur matériel, y compris les attelages, quels que soient les moyens de transport et le personnel conducteur.

Toutefois, l'autorité militaire compétente aura la faculté de s'en servir pour les soins des blessés et malades ; la restitution du matériel aura lieu dans les conditions prévues pour le personnel sanitaire, et, autant que possible, en même temps.

Article 15.

Les bâtiments et le matériel des établissements fixes demeurent soumis aux lois de la guerre, mais ne pourront être détournés de leur emploi, tant qu'ils seront nécessaires aux blessés et aux malades.

Toutefois, les commandants des troupes d'opérations pourront en disposer, en cas de nécessités militaires importantes, en assurant au préalable le sort des blessés et malades qui s'y trouvent.

Article 16.

Le matériel des Sociétés de secours, admises au bénéfice de la Convention conformément aux conditions déterminées par celle-ci, est considéré comme propriété privée et, comme tel, respecté en toute circonstance, sauf le droit de réquisition reconnu aux belligérants selon les lois et usages de la guerre.

Chapitre V.—Des Convois d'Évacuation.

Article 17.

Les convois d'évacuation seront traités comme les formations sanitaires mobiles, sauf les dispositions spéciales suivantes :

1° Le belligérant interceptant un convoi pourra, si les nécessités militaires l'exigent, le disloquer en se chargeant des malades et blessés qu'il contient.

2° Dans ce cas, l'obligation de renvoyer le personnel sanitaire, prévue à l'article 12, sera étendue à tout le personnel militaire préposé au transport ou à la garde du convoi et muni à cet effet d'un mandat régulier.

L'obligation de rendre le matériel sanitaire, prévue à l'article 14, s'appliquera aux trains de chemins de fer et bateaux de la navigation intérieure spécialement organisés pour les évacuations, ainsi qu'au matériel d'aménagement des voitures, trains et bateaux ordinaires appartenant au service de santé.

Les voitures militaires, autres que celles du service de santé, pourront être capturées avec leurs attelages.

Le personnel civil et les divers moyens de transport provenant de la réquisition, y compris le matériel de chemin de fer et les bateaux utilisés pour les convois, seront soumis aux règles générales du droit des gens.

Chapitre VI.—Du Signe Distinctif.

Article 18.

Par hommage pour la Suisse, le signe héraldique de la croix rouge sur fond blanc, formé par interversion des couleurs fédérales, est maintenu comme emblème et signe distinctif du service sanitaire des armées.

Article 19.

Cet emblème figure sur les drapeaux, les brassards ainsi que

Ch. XIV. sur tout le matériel se rattachant au service sanitaire, avec la permission de l'autorité militaire compétente.

Article 20.

Le personnel protégé en vertu des articles 9, alinéa 1er, 10 et 11 porte, fixé au bras gauche, un brassard avec croix rouge sur fond blanc, délivré et timbré par l'autorité militaire compétente, accompagné d'un certificat d'identité pour les personnes rattachées au service de santé des armées et qui n'auraient pas d'uniforme militaire.

Article 21.

Le drapeau distinctif de la Convention ne peut être arboré que sur les formations et établissements sanitaires qu'elle ordonne de respecter et avec le consentement de l'autorité militaire. Il devra être accompagné du drapeau national du belligérant dont relève la formation ou l'établissement.

Toutefois, les formations sanitaires tombées au pouvoir de l'ennemi n'arboreront pas d'autre drapeau que celui de la Croix-Rouge, aussi longtemps qu'elles se trouveront dans cette situation.

Article 22.

Les formations sanitaires des pays neutres qui, dans les conditions prévues par l'article 11, auraient été autorisées à fournir leurs services, doivent arborer, avec le drapeau de la Convention, le drapeau national du belligérant dont elles relèvent.

Les dispositions du deuxième alinéa de l'article précédent leur sont applicables.

Article 23.

L'emblème de la croix rouge sur fond blanc et les mots *Croix-Rouge* ou *Croix de Genève* ne pourront être employés, soit en temps de paix, soit en temps de guerre, que pour protéger ou désigner les formations et établissements sanitaires, le personnel et le matériel protégés par la Convention.

Chapitre VII.—De l'Application et de l'Exécution de la Convention.

Article 24.

Les dispositions de la présente Convention ne sont obligatoires que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles. Ces dispositions cesseront d'être obligatoires du moment où l'une des Puissances belligérantes ne serait pas signataire de la Convention.

Article 25.

Les commandants-en-chef des armées belligérantes auront à pourvoir aux détails d'exécution des articles précédents, ainsi qu'aux cas non prévus, d'après les instructions de leurs Gouvernements respectifs et conformément aux principes généraux de la présente Convention.

Article 26.

Les Gouvernements signataires prendront les mesures nécessaires pour instruire leurs troupes, et spécialement le personnel protégé, des dispositions de la présente Convention et pour les porter à la connaissance des populations.

Chapitre VIII.—De la Répression des Abus et des Infractions.

Article 27.

Les Gouvernements signataires, dont la législation ne serait pas dès à présent suffisante, s'engagent à prendre ou à proposer à leurs

législatures, les mesures nécessaires pour empêcher en tout temps l'emploi, par des particuliers ou par des sociétés autres que celles y ayant droit en vertu de la présente Convention, de l'emblème ou de la dénomination de *Croix-Rouge* ou *Croix de Genève*, notamment dans un but commercial, par le moyen de marques de fabrique ou de commerce. Ch. XIV.

L'interdiction de l'emploi de l'emblème ou de la dénomination dont il s'agit produira son effet à partir de l'époque déterminée par chaque législation et, au plus tard, cinq ans après la mise en vigueur de la présente Convention. Dès cette mise en vigueur, il ne sera plus licite de prendre une marque de fabrique ou de commerce contraire à l'interdiction.

Article 28.

Les Gouvernements signataires s'engagent également a prendre ou à proposer à leurs législatures, en cas d'insuffisance de leurs lois pénales militaires, les mesures nécessaires pour réprimer, en temps de guerre, les actes individuels de pillage et de mauvais traitements envers des blessés et malades des armées, ainsi que pour punir, comme usurpation d'insignes militaires, l'usage abusif du drapeau et du brassard de la Croix-Rouge par des militaires ou des particuliers non protégés par la présente Convention.

Ils se communiqueront, par l'intermédiaire du Conseil fédéral suisse, les dispositions relatives à cette répression, au plus tard dans les cinq ans de la ratification de la présente Convention.

Dispositions Générales.

Article 29.

La présente Convention sera ratifiée aussi tôt que possible.

Les ratifications seront déposées à Berne.

Il sera dressé du dépôt de chaque ratification un procès-verbal dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances contractantes.

Article 30.

La présente Convention entrera en vigueur pour chaque Puissance six mois après la date du dépôt de sa ratification.

Article 31.

La présente Convention, dûment ratifiée, remplacera la Convention du 22 août 1864 dans les rapports entre les États contractants.

La Convention de 1864 reste en vigueur dans les rapports entre les Parties qui l'ont signée et qui ne ratifieraient pas également la présente Convention.

Article 32.

La présente Convention pourra, jusqu'au 31 décembre prochain, être signée par les Puissances représentées à la Conférence qui s'est ouverte à Genève le 11 juin 1906, ainsi que par les Puissances non représentées à cette Conférence qui ont signé la Convention de 1864.

Celles de ces Puissances qui, au 31 décembre 1906, n'auront pas signé la présente Convention, resteront libres d'y adhérer par la suite. Elles auront à faire connaître leur adhésion au moyen d'une notification écrite adressée au Conseil fédéral suisse et communiquée par celui-ci à toutes les Puissances contractantes.

Les autres Puissances pourront demander à adhérer dans la même forme, mais leur demande ne produira effet que si, dans le délai d'un an à partir de la notification au Conseil fédéral, celui-ci n'a reçu d'opposition de la part d'aucune des Puissances contractantes.

Ch. XIV.

Article 33.

Chacune des Parties contractantes aura la faculté de dénoncer la présente Convention. Cette dénonciation ne produira ses effets qu'un an après la notification faite par écrit au Conseil fédéral suisse ; celui-ci communiquera immédiatement la notification à toutes les autres Parties contractantes.

Cette dénonciation ne vaudra qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à Genève, le six juillet mil neuf cent six, en un seul exemplaire, qui restera déposé dans les archives de la Confédération suisse, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

(TRANSLATION.)

Chapter I.—The Wounded and Sick.

Article 1.

Officers and soldiers, and other persons officially attached to armies, shall be respected and taken care of when wounded or sick, by the belligerent in whose power they may be, without distinction of nationality.

Nevertheless, a belligerent who is compelled to abandon sick or wounded to the enemy shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to contribute to the care of them.

Article 2.

Except as regards the treatment to be provided for them in virtue of the preceding Article, the wounded and sick of an army who fall into the hands of the enemy are prisoners of war, and the general provisions of international law concerning prisoners are applicable to them.

Belligerents are, however, free to arrange with one another such exceptions and mitigations with reference to sick and wounded prisoners as they may judge expedient ; in particular they will be at liberty to agree—

To restore to one another the wounded left on the field after a battle ;

To repatriate any wounded and sick whom they do not wish to retain as prisoners, after rendering them fit for removal or after recovery ;

To hand over to a neutral State, with the latter's consent, the enemy's wounded and sick to be interned by the neutral State until the end of hostilities.

Article 3.

After each engagement the Commander in possession of the field shall take measures to search for the wounded, and to insure protection against pillage and maltreatment both for the wounded and for the dead.

He shall arrange that a careful examination of the bodies is made before the dead are buried or cremated.

Article 4.

As early as possible each belligerent shall send to the authorities

of the country or army to which they belong the military identification marks or tokens found on the dead, and a nominal roll of the wounded or sick who have been collected by him. The belligerents shall keep each other mutually informed of any internments and changes, as well as of admissions into hospital and deaths, among the wounded and sick in their hands. They shall collect all the articles of personal use, valuables, letters, &c., which are found on the field of battle, or left by the wounded or sick who have died in the medical establishments or units, in order that such objects may be transmitted to the persons interested by the authorities of their own country.

Article 5.

A competent military authority may appeal to the charitable zeal of the inhabitants to collect and take care of, under his direction, the wounded or sick of armies, granting to those who respond to the appeal special protection and certain immunities.

Chapter II.—Medical Units and Establishments.

Article 6.

Mobile medical units (that is to say, those which are intended to accompany armies into the field) and the fixed establishments of the medical service shall be respected and protected by the belligerents.

Article 7.

The protection to which medical units and establishments are entitled ceases if they are made use of to commit acts harmful to the enemy.

Article 8.

The following facts are not considered to be of a nature to deprive a medical unit or establishment of the protection guaranteed by Article 6:—

1. That the personnel of the unit or of the establishment is armed, and that it uses its arms for its own defence or for that of the sick and wounded under its charge.

2. That in default of armed orderlies the unit or establishment is guarded by a piquet or by sentinels, furnished with an authority in due form.

3. That weapons and cartridges taken from the wounded and not yet handed over to the proper department are found in the unit or establishment.

Chapter III.—Personnel.

Article 9.

The personnel engaged exclusively in the collection, transport, and treatment of the wounded and the sick, as well as in the administration of medical units and establishments, and the Chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.

These provisions apply to the guard of medical units and establishments under the circumstances indicated in Article 8 (2).

Article 10.

The personnel of Voluntary Aid Societies, duly recognized and authorized by their Government, who may be employed in the medical units and establishments of armies, is placed on the same footing as the personnel referred to in the preceding Article, provided always that the first-mentioned personnel shall be subject to military law and regulations.

Each State shall notify to the other, either in time of peace or at the commencement of or during the course of hostilities, but in every case before actually employing them, the names of the Societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armies.

Article 11.

A recognized Society of a neutral country can only afford the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned.

A belligerent who accepts such assistance is bound to notify the fact to his adversary before making any use of it.

Article 12.

The persons designated in Articles 9, 10, and 11, after they have fallen into the hands of the enemy, shall continue to carry on their duties under his direction.

When their assistance is no longer indispensable, they shall be sent back to their army or to their country at such time and by such route as may be compatible with military exigencies.

They shall then take with them such effects, instruments, arms, and horses as are their private property.

Article 13.

The enemy shall secure to the persons mentioned in Article 9, while in his hands, the same allowances and the same pay as are granted to the persons holding the same rank in his own army.

Chapter IV.—Material.

Article 14.

If mobile medical units fall into the hands of the enemy they shall retain their material, including their teams, irrespectively of the means of transport and the drivers employed.

Nevertheless, the competent military authority shall be free to use the material for the treatment of the wounded and sick. It shall be restored under the conditions laid down for the medical personnel, and so far as possible at the same time.

Article 15.

The buildings and material of fixed establishments remain subject to the laws of war, but may not be diverted from their purpose so long as they are necessary for the wounded and the sick.

Nevertheless, the Commanders of troops in the field may dispose of them in case of urgent military necessity, provided they make previous arrangements for the welfare of the wounded and sick who are found there.

Article 16.

The material of Voluntary Aid Societies which are admitted to the privileges of the Convention under the conditions laid down therein is considered private property, and, as such, to be respected under all circumstances, saving only the right of requisition recognized for belligerents in accordance with the laws and customs of war.

Chapter V.—Convoys of Evacuation.

Article 17.

Convoys of evacuation shall be treated like mobile medical units, subject to the following special provisions :—

1. A belligerent intercepting a convoy may break it up if military exigencies demand, provided he takes charge of the sick and wounded who are in it.

2. In this case, the obligation to send back the medical personnel, provided for in Article 12, shall be extended to the whole of the military personnel detailed for the transport or the protection of the convoy and furnished with an authority in due form to that effect.

The obligation to restore the medical material provided for in Article 14 shall apply to railway trains, and boats used in internal navigation, which are specially arranged for evacuations, as well as to the material belonging to the medical service for fitting up ordinary vehicles, trains, and boats.

Military vehicles, other than those of the medical service, may be captured with their teams.

The civilian personnel and the various means of transport obtained by requisition, including railway material and boats used for convoys, shall be subject to the general rules of international law.

Chapter VI.—The Distinctive Emblem.

Article 18.

As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the medical service of armies.

Article 19.

With the permission of the competent military authority this emblem shall be shown on the flags and armlets (brassards), as well as on all the material belonging to the medical service.

Article 20.

The personnel protected in pursuance of Articles 9 (paragraph 1), 10, and 11 shall wear, fixed to the left arm, an armlet (brassard) with a red cross on a white ground, delivered and stamped by the competent military authority and accompanied by a certificate of identity in the case of persons who are attached to the medical service of armies, but who have not a military uniform.

Article 21.

The distinctive flag of the Convention shall only be hoisted over those medical units and establishments which are entitled to be respected under the Convention, and with the consent of the military authorities. It must be accompanied by the national flag of the belligerent to whom the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Red Cross.

Article 22.

The medical units belonging to neutral countries which may be authorized to afford their services under the conditions laid down in Article 11 shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached.

The provisions of the second paragraph of the preceding Article are applicable to them.

Article 23.

The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used, either in time of peace or in time of war, except to protect or to indicate the medical units and establishments and the personnel and material protected by the Convention.

Chapter VII.—Application and Carrying out of the Convention.

Article 24.

The provisions of the present Convention are only binding upon the Contracting Powers in the case of war between two or more of them. These provisions shall cease to be binding from the moment when one of the belligerent Powers is not a party to the Convention.

Article 25.

The Commanders-in-chief of belligerent armies shall arrange the details for carrying out the preceding Articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

Article 26.

The Signatory Governments will take the necessary measures to instruct their troops, especially the personnel protected, in the provisions of the present Convention, and to bring them to the notice of the civil population.

Chapter VIII.—Prevention of Abuses and Infractions.

Article 27.

The Signatory Governments, in countries the legislation of which is not at present adequate for the purpose, undertake to adopt or to propose to their legislative bodies such measures as may be necessary to prevent at all times the employment of the emblem or the name of Red Cross or Geneva Cross by private individuals or by Societies other than those which are entitled do so under the present Convention, and in particular for commercial purposes as a trade-mark or trading mark. The prohibition of the employment of the emblem or the names in question shall come into operation from the date fixed by each legislature, and at the latest five years after the present Convention comes into force. From that date it shall no longer be lawful to adopt a trade-mark or trading mark contrary to this prohibition.

Article 28.

The Signatory Governments also undertake to adopt, or to propose to their legislative bodies should their military law be insufficient for the purpose, the measures necessary for the repression in time of war of individual acts of pillage and maltreatment of the wounded and sick of armies, as well as for the punishment, as an unlawful employment of military insignia, of the improper use of the Red Cross flag and armlet (brassard) by officers and soldiers or private individuals not protected by the present Convention.

They shall communicate to one another, through the Swiss Federal Council, the provisions relative to these measures of repression at the latest within five years from the ratification of the present Convention

Article 29.

The present Convention shall be ratified as soon as possible. The ratifications shall be deposited at Berne.

When each ratification is deposited a *procès-verbal* shall be drawn up, and a copy thereof certified as correct shall be forwarded through the diplomatic channel to all the Contracting Powers.

Article 30.

The present Convention shall come into force for each Power six months after the date of the deposit of its ratification.

Article 31.

The present Convention, duly ratified, shall replace the Convention of the 22nd August, 1864, in relations between the Contracting States. The Convention of 1864 remains in force between such of the parties who signed it who may not likewise ratify the present Convention.

Article 32.

The present Convention may be signed until the 31st December next by the Powers represented at the Conference which was opened at Geneva on the 11th June, 1906, as also by the Powers, not represented at that Conference, which signed the Convention of 1864.

Such of the aforesaid Powers as shall have not signed the present Convention by the 31st December, 1906, shall remain free to accede to it subsequently. They shall notify their accession by means of a written communication addressed to the Swiss Federal Council, and communicated by the latter to all the Contracting Powers.

Other Powers may apply to accede in the same manner, but their request shall only take effect if within a period of one year from the notification of it to the Federal Council no objection to it reaches the Council from any of the Contracting Powers.

Article 33.

Each of the Contracting Powers shall be at liberty to denounce the present Convention. The denunciation shall not take effect until one year after the written notification of it has reached the Swiss Federal Council. The Council shall immediately communicate the notification to all the other Contracting Parties.

The denunciation shall only affect the Power which has notified it.

In witness whereof the Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at Geneva the 6th July, 1906, in a single copy, which shall be deposited in the archives of the Swiss Confederation, and of which copies certified as correct shall be forwarded to the Contracting Powers through the diplomatic channel.

PART II.

THE ARMY ACT, RULES OF PROCEDURE, &c.

THE ARMY (ANNUAL) ACT, 1907.

EXTRACT FROM

An Act to provide, during Twelve Months, for the Discipline and Regulation of the Army. (*a*.)

WHEREAS the raising or keeping of a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law:

And whereas it is adjudged necessary by His Majesty and this present Parliament that a body of forces should be continued for the safety of the United Kingdom and the defence of the possessions of His Majesty's Crown, and that the whole number of such forces should consist of one hundred and ninety thousand, including those to be employed at the depôts in the United Kingdom of Great Britain and Ireland for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within His Majesty's Indian possessions:

And whereas it is also judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal Marine forces should be employed in His Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid:

And whereas the said marine forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or vessels, merchant ships or vessels, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of His Majesty's forces by sea:

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm, by martial law, or in any other manner than by the judgment of his peers and according to the known and established laws of this realm; yet nevertheless, it being requisite, for the retaining all the before-mentioned forces, and other persons subject to military law, in their duty, that an exact discipline be observed, and that persons belonging to the said forces who mutiny or stir up sedition, or desert His Majesty's service, or are guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow:

And whereas the Army Act will expire in the year one thousand nine hundred and seven on the following days: 41 & 45 Vict. c. 58.

(*a*) In the United Kingdom, the Channel Islands, and the Isle of Man, on the thirtieth day of April; and

(*b*) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, on the thirty-first day of July; and

(*a*) See Army Act, s. 2., and ch. II, para. 35.

(*c*) Elsewhere, whether within or without His Majesty's dominions, on the thirty-first day of December :

Be it therefore enacted . . . . . as follows :—

Short title.

1. This Act may be cited as the Army (Annual) Act, 1907.

Army Act to be in force for specified times.

2.—(1) The Army Act shall be and remain in force during the periods herein-after mentioned, and no longer, unless otherwise provided by Parliament (that is to say) :—

(*a*) Within the United Kingdom, the Channel Islands, and the Isle of Man, from the thirtieth day of April one thousand nine hundred and seven to the thirtieth day of April one thousand nine hundred and eight, both inclusive ; and

(*b*) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, from the thirty-first day of July one thousand nine hundred and seven to the thirty-first day of July one thousand nine hundred and eight, both inclusive ; and

(*c*) Elsewhere, whether within or without His Majesty's dominions, from the thirty-first day of December one thousand nine hundred and six to the thirty-first day of July one thousand nine hundred and eight, both inclusive :

(2) The Army Act, while in force, shall apply to persons subject to military law, whether within or without His Majesty's dominions.

(3) A person subject to military law shall not be exempted from the provisions of the Army Act by reason only that the number of the forces for the time being in the service of His Majesty, exclusive of the marine forces, is either greater or less than the number herein-before mentioned.

Prices in respect of billeting.

3. There shall be paid to the keeper of a victualling house for the accommodation provided by him in pursuance of the Army Act the prices specified in the First Schedule to this Act.

FIRST SCHEDULE.

Accommodation to be provided.	Maximum Price.
Lodging and attendance for soldier where meals furnished.	Sixpence per night.
Breakfast as specified in Part I. of the Second Schedule to the Army Act.	Fourpence each.
Hot dinner as so specified	Elevenpence half-penny each.
Supper as so specified	Twopence halfpenny each.
Where no meals furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat.	Sixpence per day.
Ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse.	One shilling and ninepence per day.
Lodging and attendance for officer	Two shillings per night.

Note.—An Officer shall pay for his food.

THE ARMY ACT.

ARRANGEMENT OF SECTIONS.

Preliminary.

	Section
Short title of Act	1
Mode of bringing Act into force	2
Division of Act	3

Part I.

DISCIPLINE.

Crimes and Punishments.

Offences in respect of Military Service.

Offences in relation to the enemy punishable with death . ..	4
Offences in relation to the enemy not punishable with death ..	5
Offences punishable more severely on active service than at other times	6

Mutiny and Insubordination.

Mutiny and sedition	7
Striking or threatening superior officer	8
Disobedience to superior officer	9
Insubordination	10
Neglect to obey garrison or other orders	11

Desertion, Fraudulent Enlistment, and Absence without Leave.

Desertion	12
Fraudulent enlistment	13
Assistance of or connivance at desertion	14
Absence from duty without leave	15

Disgraceful Conduct.

Scandalous conduct of officer	16
Fraud by persons in charge of money or goods	17
Disgraceful conduct of soldier	18

Drunkenness.

	Section
Drunkenness	19

Offences in relation to Persons in Custody.

Permitting escape of person in custody	20
Irregular arrest or confinement	21
Escape from confinement	22

Offences in relation to Property.

Corrupt dealings in respect of supplies to forces	23
Deficiency in and injury to equipment	24

Offences in relation to False Documents and Statements.

Falsifying official documents and false declarations	25
Neglect to report, and signing in blank	26
False accusation, or false statement by soldier	27

Offences in relation to Courts-martial.

Offences in relation to courts-martial	28
False evidence	29

Offences in relation to Billeting.

Offences in relation to billeting	30

Offences in relation to Impressment of Carriages.

Offences in relation to the impressment of carriages, and their attendants	31

Offences in relation to Enlistment.

Enlistment of soldier or sailor discharged with ignominy or disgrace	32
False answers or declarations on enlistment	33
General offences in relation to enlistment	34

Miscellaneous Military Offences.

Traitorous words	35
Injurious disclosures	36
Ill-treating soldier	37
Duelling and attempting to commit suicide	38
Refusal to deliver to civil power officers and soldiers accused of civil offences	39
Conduct to prejudice of military discipline	40

Offences punishable by ordinary Law.

Offences punishable by ordinary law of England	41

Redress of Wrongs.

	Section
Mode of complaint by officer	42
Mode of complaint by soldier	43

Punishments.

Scale of punishments by courts-martial	44

Arrest and Trial.

Arrest.

Custody of persons charged with offences	45

Power of Commanding Officer.

Power of commanding officer	46

Courts-martial.

Regimental courts-martial	47
General and district courts-martial	48
Field general courts-martial	49
Courts-martial in general	50
Challenges by accused	51
Administration of oaths	52
Procedure	53
Confirmation, revision, and approval of sentences	54
* * * *	55
Conviction of less offence permissible on charge of greater	56

Execution of Sentence.

Commutation and remission of sentences	57
Effect of sentence of penal servitude	58
Execution of sentences of penal servitude passed in the United Kingdom	59
Execution of sentences of penal servitude passed in India or a colony	60
Execution of sentences of penal servitude passed in a foreign country	61
General provisions applicable to penal servitude	62
Execution of sentences of imprisonment and detention	63
Supplemental provisions as to sentences of imprisonment and detention passed or being undergone in the United Kingdom	64
Supplemental provisions as to sentences of imprisonment and detention passed or being undergone in India or colony	65
Supplemental provisions as to sentences of imprisonment and detention passed in a foreign country	66
Removal of prisoner or soldier undergoing detention to place where corps is serving	67
Commencement of term of penal servitude, imprisonment, or detention	68

MISCELLANEOUS.

Articles of War and Rules of Procedure.

	SECTION
Power of His Majesty to make Articles of War	69
Power of His Majesty to make rules of procedure	70

Command.

Removal of doubts as to military command	71

Inquiry as to and Confession of Desertion.

Inquiry by court on absence of soldier..	72
Confession by soldier of desertion or fraudulent enlistment ..	73

Provost-Marshal.

Provost-marshal	74

Restitution of Stolen Property.

Power as to restitution of stolen property	75

PART II.

ENLISTMENT.

Period of Service.

Limit of original enlistment..	76
Terms of original enlistment..	77
Change of conditions of service	78
Reckoning and forfeiture of service	79

Proceedings for Enlistment.

Mode of enlistment and attestation	80
Power of recruit to purchase discharge	81

Appointment to Corps and Transfers.

Enlistment for general service and appointment to corps ..	82
Effect of appointment to a corps and provision for transfers ..	83

Re-engagement and Prolongation of Service.

Re-engagement of soldiers	84
Continuance in service after twenty-one years' service	85
Re-engagement and continuance of service of non-commissioned officers	86
Prolongation of service in certain cases	87
In imminent national danger, His Majesty may continue soldiers in or require soldiers to re-enter army service	88

Discharge and Transfer to Reserve Force.

	Section
Transfer of soldiers to reserve when corps ordered abroad ..	89
Discharge or transfer to reserve	90
Delivery of lunatic soldier on discharge with his wife or child at workhouse, or of dangerous lunatic at asylum	91
Regulations as to discharge of soldiers	92

Authorities to Enlist and Attest Recruits.

Regulations as to persons to enlist and enlistment of soldiers ..	93
Justices of the peace for the purposes of enlistment	94

Special Provisions as to Persons to be enlisted.

Enlistment of aliens, negroes, &c.	95
Claims of masters to apprentices	96
Application of apprentice provisions to indentured labourers ..	97

Offences as to Enlistment.

Penalty on unlawful recruiting	98
Recruits punishable for false answers	99

Miscellaneous as to Enlistment.

Validity of attestation and enlistment or re-engagement.. ..	100
Definition for purposes of Part II of competent military authority and reserve	101

Part III.

BILLETING AND IMPRESSMENT OF CARRIAGES.

Billeting of Officers and Soldiers.

Suspension of 3 Chas. I, c. 1; 31 Chas. II, c. 1; 6 Anne (I), c. 14, as to billeting	102
Obligation of constable to provide billets for officers, soldiers, and horses	103
Liability to provide billets	104
Officers, soldiers, and horses entitled to be billeted	105
Accommodation and payment on billet	106
Annual list of keepers of victualling houses liable to billets ..	107
Regulations as to grant of billets	108

Offences in relation to Billeting.

Offences by constables	109
Offences by keepers of victualling houses	110
Offences by officers or soldiers	111

Impressment of Carriages.

SECTION

Supply of carriages, &c., for regimental baggage and stores on the march 112
Payment for and regulations as to carriages, animals, &c. .. 113
Annual list of persons liable to supply carriages 114
Supply of carriages and vessels in case of emergency 115

Offences in relation to the Impressment of Carriages.

Offences by constables 116
Offences by persons ordered to furnish carriages, animals, or vessels 117
Offences by officers or soldiers 118

Supplemental Provisions as to Billeting and Impressment of Carriages.

Application to court of summary jurisdiction respecting sums due to keepers of victualling houses or owners of carriages, &c. 119
Provisions as to constables, police authorities, and justices .. 120
Fraudulent claim for carriages, animals, &c. 121

PART IV.

GENERAL PROVISIONS.

Supplemental provisions as to Courts-martial.

Royal warrant required for convening and confirming general courts-martial 122
Authority of officer empowered to convene general courts-martial required for convening and confirming district courts-martial .. 123
Right of person tried to copy of proceedings of court-martial .. 124
Summoning and privilege of witnesses at courts-martial 125
Misconduct of civilian at court-martial 126
Court-martial governed by English law only 127
Rules of evidence to be the same as in civil courts 128
Position of counsel at courts-martial 129
Provision in case of insane persons 130

General provisions as to Prisons and Detention Barracks.

Arrangements with Indian and colonial governments as to prisons and detention barracks 131
Duty of governor of prison to receive prisoners, deserters, and absentees without leave 132

Military Prisons and Detention Barracks.

Establishment and regulation of military prisons and detention barracks 133
Restrictions on confinement in prisons in India or colonies, not being military prisons 134
Classification of prisoners 135
* * * * * 135A

Pay.

	Section
Authorised deductions only to be made from pay	136
Penal stoppages from ordinary pay of officers	137
Penal stoppages from ordinary pay of soldiers	138
How deduction of pay may be remitted	139
Supplemental as to deductions from ordinary pay..	140
Prohibition of assignment of military pay, pensions, &c.	141
Punishment of false oath and personation	142

Exemptions of Officers and Soldiers.

Exemptions of officers and soldiers from tolls	143
Exemption of soldiers in respect to civil process	144
Liability of soldier to maintain wife and children	145
Officers not to be sheriffs or mayors	146
Exemption from jury	147

Court of Requests in India.

* * * * * * 148–151

Legal Penalties in Matters respecting Forces.

Punishment for pretending to be a deserter	152
Punishment for inducing soldiers to desert	153
Apprehension of deserters	154
Penalty on trafficking in commissions	155
Penalty on purchasing from soldiers regimental necessaries, equipments, stores, &c.	156

Jurisdiction.

Persons not to be tried twice	157
Liability to military law in respect of status	158
Liability to military law in respect of place of commission of offence	159
Punishment not increased by trial elsewhere than offence committed	160
Liability to military law in respect of time for trial of offences ..	161
Adjustment of civil and military law	162

Evidence.

Regulations as to evidence	163
Evidence of civil conviction or acquittal	164
Evidence of conviction by court-martial	165

Summary and other Legal Proceedings.

Prosecution of offences, and recovery and application of fines ..	166
Summary proceedings in Scotland	167
Summary proceedings in Isle of Man, Channel Islands, India, and the colonies	168
Power of Governor-General of India and legislature of colony as to fines	169
Protection of persons acting under Act	170

Miscellaneous.

	Section
Exercise of powers vested in holder of military office	171
Provisions as to warrants and orders of military authorities ..	172
Furlough in case of sickness	173
Licences of canteens	174
Use of recreation rooms without licence	174A

Part V.

APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS.

Persons subject to Military Law.

Persons subject to military law as officers	175
Persons subject to military law as soldiers	176
Persons belonging to colonial forces and subject to military law as officers or soldiers	177
Mutual relations of regular forces and auxiliary forces	178
Modification of Act with respect to Royal Marines	179
Modification of Act with respect to His Majesty's Indian forces	180
Modification of Act with respect to auxiliary forces	181
Special provisions as to warrant officers	182
Special provisions as to non-commissioned officer	183
Special provisions as to application of Act to persons not belonging to His Majesty's forces	184

Saving Provisions.

Special provisions as to prisoners and prisons in Ireland	185
Saving of 29 & 30 Vict., c. 109, s. 88, as to forces when on board His Majesty's ships	186

Definitions.

Application of Act to Channel Islands and Isle of Man	187
Application of Act to ships	188
Interpretation of term "active service"	189
Interpretation of terms	190

Part VI.

COMMENCEMENT AND APPLICATION OF ACT, AND REPEAL.

* * * * * 191-193

Schedules.

THE ARMY ACT.

[44 & 45 Vict. c. 58.]

An Act to consolidate the Army Discipline and Regulation Act, 1879, *and the subsequent Acts amending the same* (*a*). Ss. 1-3.

Preliminary.

Short title of Act.

1. This Act may be cited for all purposes as the Army Act.

Mode of bringing Act into force.

2. This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force, or continuing the same.

NOTE.

For explanation of the reasons for bringing this Act into force annually by a separate Act, see ch. ii, page 11, note (*a*); and para. 35.

Division of Act.

3. This Act is divided into five parts, relating to the following subject-matter; that is to say,

Part I, discipline:

Part II, enlistment:

Part III, billeting and impressment of carriages:

Part IV, general provisions:

Part V, application of military law, saving provisions, and definitions.

PART I.

DISCIPLINE.

CRIMES AND PUNISHMENTS.

Offences in respect of Military Service.

Part I. s. 4. Offences in relation to the enemy punishable with death.

4. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any

(*a*) The Act is printed with the amendments introduced by the Army (Annual) Act, 1882, and the subsequent Annual Acts down to and inclusive of the Act of 1907, in accordance with the directions of 48 & 49 Vict. c. 8, and also incorporates the amendments made by the Territorial and Reserve Forces Act, 1907.

Under s. 14 of the Army (Annual) Act, 1901, amendments of the Army Act contained in any Act continuing the Army Act come into operation in any place as from the day from which the Army Act is continued in that place.

Part I.
s. 4.

governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend; or

(2.) Shamefully casts away his arms, ammunition, or tools in the presence of the enemy; or

(3.) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy; or

(4.) Assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner; or

(5.) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy; or

(6.) Knowingly does when on active service any act calculated to imperil the success of His Majesty's forces or any part thereof; or

(7.) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

NOTE.

Subject to military law.—This includes not only officers and soldiers, but also camp followers, sutlers, &c. See ss. 175, 176, and as to natives of India, s. 180.

Paragraph (1). *Shamefully abandons, &c.* This offence can only be committed by the person in charge of the garrison, post, &c., and not by the subordinate under his command. The surrender of a place by an officer charged with its defence can only be justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and magazines, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore an offence under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in s. 6 (1), where it has reference to an individual.

A charge under the first part of this sub-section must detail some circumstances which make the abandonment in a military sense shameful.

Paragraph (2). *Shamefully casts away.* The charge must show the circumstances which make the act in a military sense shameful. The word "shamefully" is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

Paragraph (3). *Treacherously or through cowardice.* The charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under section 5 (4).

Paragraph (4). *Supplies.* This would include the taking any steps to restore a supply of water cut off by our forces.

Knowingly. Evidence should if possible be given that the accused knew the person harboured or protected to be an enemy; but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances. The same observation applies to "voluntarily" in (5) and to "knowingly" in (6). See note to Rule 60 (A).

Paragraph (6). For definition of active service, see s. 189 (1).

Paragraph (7). This paragraph is confined to acts, words, neglect, or omissions which show cowardice, and the charge must be framed accordingly. Drunkenness or treachery (unaccompanied by cowardice) cannot be dealt with under this paragraph.

Misbehaves. This means that the accused, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time.

Offences in relation to the enemy not punishable with death.

5. Every person subject to military law who on active service commits any of the following offences; that is to say,

(1.) Without orders from his superior officer leaves the ranks, in order to secure prisoners or horses, or on pretence of taking wounded men to the rear; or

(2.) Without orders from his superior officer wilfully destroys or damages any property; or

(3.) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to rejoin His Majesty's service when able to rejoin the same; or

(4.) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy; or

(5.) By word of mouth or in writing, or by signals, or otherwise, spreads reports calculated to create unnecessary alarm or despondency; or

(6.) In action, or previously to going into action, uses words calculated to create alarm or despondency,

shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

NOTE.

Paragraph (4). *Without due authority.* If *primâ facie* a want of authority is shown, it will rest with the accused to show that he had authority, but any evidence of his having had authority which is known to the prosecutor should be adduced by the prosecutor. See rule 60 (A) and note. The terms of this paragraph include any unauthorised communication of intelligence to the enemy even by indirect methods, such as sending letters or sketches, or plans, to friends or newspapers. As to injurious disclosures not on active service, see s. 36.

Every one present with an army should bear in mind that the publication of letters from the army containing facts and opinions, often entirely erroneous,

Part I. ss. 5-6.

relating to the operations or prospects of the campaign, can scarcely fail to have mischievous results; and it is well known that both during the Peninsular and Crimean wars, the enemy were indebted for information to English newspapers. See G.O. of Duke of Wellington, dated Celorico, 10 Aug., 1810, quoted in Simmons on Courts-Martial. p. 67.

Paragraph (5). The charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create unnecessary alarm or despondency. A similar remark applies to a charge under paragraph (6). It is not necessary to aver or prove that the reports were false,—indeed the truth may increase the offence;—nor is it necessary to show that any effect was actually produced by the reports spread or words used: it could, however, seldom be expedient to try an officer or soldier under this section for expressions which could not be shown to have had some effect. The offence under paragraph (5) may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country.

Offences punishable more severely on active service than at other times.

6. (1.) Every person subject to military law who commits any of the following offences, that is to say,

(*a.*) Leaves his commanding officer to go in search of plunder; or

(*b.*) Without orders from his superior officer, leaves his guard, picquet, patrol, or post; or

(*c.*) Forces a safeguard; or

(*d.*) Forces or strikes a soldier when acting as sentinel; or

(*e.*) Impedes the provost-marshal, or any assistant provost-marshal, or any officer or non-commissioned officer, or other person legally exercising authority under or on behalf of the provost-marshal, or, when called on, refuses to assist in the execution of his duty the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer, or other person; or

(*f.*) Does violence to any person bringing provisions or supplies to the forces; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving; or

(*g.*) Breaks into any house or other place in search of plunder; or

(*h.*) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field, or elsewhere; or

(*i.*) Treacherously makes known the parole, watchword, or countersign, to any person not entitled to receive it, or treacherously gives a parole, watchword, or countersign different from what he received; or

(*j.*) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders issued in that respect; or

(*k.*) Being a soldier acting as sentinel, commits any of the following offences; that is to say,

(i) sleeps or is drunk on his post; or

(ii) leaves his post before he is regularly relieved,

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) Every person subject to military law who commits any of the following offences; (that is to say),

(*a.*) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field, or elsewhere; or

(*b.*) Makes known the parole, watchword, or countersign to any person not entitled to receive it; or, without good and sufficient cause, gives a parole, watchword or countersign different from what he received,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE.

Sub-section (1). The punishment for the offences here mentioned varies very widely according as the offences are committed on active service or not on active service; and where a man is charged with committing any of them on active service, those words must always be inserted in the charge. For the definition of active service, see section 189 (1).

(*a.*) This paragraph, having regard to the special military significance of the term "plunder," is applicable only to offences committed on active service.

(*b.*) *Post.* As used with respect to an individual this word refers to the position or place in which it may be the duty of an officer or soldier to be, especially when under arms: and with respect in particular to a sentry, it applies to the spot where the sentry is left to the observance of his duties by the officer or non-commissioned officer posting him; or to any limits specially pointed out as his walk. In determining what, in any particular case, is a post, the court will use their military knowledge. See note to (*k*) below.

The place in which the person was posted is material and should be stated in the charge.

(*c.*) *Safeguard.* A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, mansion, or other property. A single sentry posted from such party is still part of the safe-

Part I. s. 6.

guard, and it is as criminal to force him by breaking into the house, cellar, or other property under his especial care as to force the whole party.

(*e.*) The court may exercise their military knowledge as to whether a person was a provost-marshal, assistant provost-marshal or a person legally exercising authority under or on behalf of the provost-marshal: but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost-marshal or assistant provost-marshal, or was not legally exercising the above-mentioned authority.

(*f.*) It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence which in other circumstances would be trivial, may require exemplary punishment. For instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the army, the offence deserves very severe punishment. As an offence under the paragraph will really be a civil offence when not committed on active service, a person should not be charged under this paragraph when the offence is committed in the United Kingdom or in any other place where there is a civil court competent conveniently to deal with the case (see Ch. VII, para. 3). On the other hand, on active service, offences which, if committed in the United Kingdom, would be tried by a civil court, may be better tried under this enactment. For instance, a sutler accused of rape committed on an inhabitant of the country might properly be tried under it. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

(*g.*) The house or other place should be specified in the charge.

Plunder. See above note to (*a*).

(*h.*) The charge must set out exactly the signal made or the words used. If means other than words are used they must be specified briefly in the particulars of the charges; and the same remark applies to the statement of the "elsewhere."

Intentionally. See note to s. 4 (4), as to "knowingly," and Ch. VII, para. 24.

(*i.*) Although treachery must be averred in a charge under this paragraph, and want of good and sufficient cause in a charge under sub-section 2 (*b*), the charge need not detail the circumstances of the treachery or of the absence of good and sufficient cause. Upon proof that the accused made known the watchword to a person not entitled to receive it, or gave a watchword different from what he received, the court will be at liberty to infer the treachery or the absence of good and sufficient cause, unless the accused can show that he acted from good cause and not treacherously. The charge must aver or show that the person was not entitled to receive the watchword.

Watchword will include any authorised pass-word not being parole or countersign which might, for example, be adopted for a particular emergency.

(*j.*) The charge must show how the act charged was irregular and contrary to orders.

(*k.*) *Post.* See note to (*b*) above. The fact of a sentry not being regularly posted is immaterial. A soldier is liable, if, being one of the guard or body furnishing the sentry for the post, he has undertaken the duty of sentry, even though not posted in the regular way by a non-commissioned officer. A sentry found drunk a short distance from his post should be charged with leaving his post: he cannot properly be charged with being drunk on his post, though he may be charged with drunkenness on duty. As to "stablemen," see K.R., para. 560.

Sub-section (2). (*a.*) See note to (1) (*h*) above. This paragraph applies only to false alarms among the troops occasioned negligently.

(*b.*) See note to (1) (*i*) above.

Mutiny and Insubordination.

Mutiny and sedition.

7. Every person subject to military law who commits any of the following offences ; that is to say,

(1.) Causes or conspires with any other persons to cause any mutiny or sedition in any forces belonging to His Majesty's regular, reserve, or auxiliary forces, or Navy ; or

(2.) Endeavours to seduce any person in His Majesty's regular, reserve, or auxiliary forces, or Navy, from allegiance to His Majesty, or to persuade any person in His Majesty's regular, reserve, or auxiliary forces, or Navy, to join in any mutiny or sedition ; or

(3.) Joins in, or, being present, does not use his utmost endeavours to suppress, any mutiny or sedition in any forces belonging to His Majesty's regular, reserve, or auxiliary forces, or Navy ; or

(4.) Coming to the knowledge of any actual or intended mutiny or sedition in any forces belonging to His Majesty's regular, reserve, or auxiliary forces, or Navy, does not without delay inform his commanding officer of the same,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

NOTE.

Paragraph (1). *Mutiny or sedition.* See as to these offences, Ch. III, paras. 4-6. A man might be tried under this paragraph for conspiring to cause a mutiny though the conspiracy proved abortive, and no mutiny took place.

Paragraph (2). Civilians who endeavour to seduce any person serving in His Majesty's forces by sea or land from allegiance to His Majesty, or to incite any such person to commit any traitorous practice whatsoever, are liable on conviction by a civil court to penal servitude for life under 37 Geo. III, c. 70, as amended by 7 Will. IV and 1 Vict. c. 91.

Paragraph (3). *Being present.* Doubts might well arise whether men present when a mutiny was being contrived or had actually begun were actually joining it or not. This paragraph provides that if they are present and do not use their utmost endeavours to suppress it, they will be equally guilty as if they took that active part which constitutes joining in a mutiny. Consequently, men present on parade, or present accidentally, or induced by false pretences to attend a meeting, where a mutiny is begun or contrived, will be guilty of an offence under this paragraph although they took no active part, and therefore can hardly be said to have joined in the mutiny. If a doubt exists as to whether any individual did or did not take such an active part as to have joined in the mutiny, he may be charged in alternative charges under paragraph (1) and this paragraph.

Each one of a body of men not marching, or not coming from their barrack room when duly ordered, is guilty of mutiny, if he cannot show that his disobedience was occasioned solely by reason of compulsion.

Part I. ss. 7-8.

Utmost endeavours. This does not necessarily mean the utmost of which a man is capable, but such endeavours as a man might be reasonably and fairly expected to make.

Paragraph (4). *Commanding officer.* This expression will include any person having a military command over the person who has knowledge of the mutiny or sedition, and is not limited by Rule 129. A private soldier, for example, would properly inform his serjeant, and information so given would be held to be given to his commanding officer within the meaning of the section.

Striking or threatening superior officer.

8. (1.) Every person subject to military law who commits any of the following offences; that is to say,

Strikes or uses or offers any violence to his superior officer, being in the execution of his office,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned; and

(2.) Every person subject to military law who commits any of the following offences; that is to say,

Strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer,

shall on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Sub-section (1). *In the execution of his office.* It is difficult accurately to define these words, but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior is or is not in the execution of his office. An officer in plain clothes may undoubtedly be in the execution of his office; but where the officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the soldier at the time of offering the violence that the person assaulted was an officer, which is not the case where the officer is in uniform. On the other hand, there may be circumstances in which an officer in uniform is not in the execution of his office. A corporal asleep in the barrack room of which he was in charge would probably be held to be within the protection of this section.

An officer or non-commissioned officer in quarters is in the execution of his office.

A serjeant out of barracks ordering a disorderly soldier to return to barracks is in the execution of his office.

Offers any violence. These words include any defiant gesture or act which if completed would end in actual violence, but do not extend to an insulting or impertinent gesture or act from which violence could not result. For example, a soldier throwing down his arms or his accoutrements on parade, or throwing

away his cap or belt in an impertinent manner, but in such a direction that they could not strike a superior, could not be deemed to offer violence within the meaning of this enactment. So also a man shaking his fist, or even drawing a bayonet, or otherwise making a show of violence against a superior, behind the bars of a cell or at such a distance that striking him was at the moment impossible, is not guilty of offering violence. On the other hand, throwing a missile, or pointing a loaded firearm at a superior would come within the section.

If the violence be used in self-defence, for instance, if it be shown that it was necessary, or that at the moment the accused had reason to believe it was necessary for his actual protection from injury, and that he used no more violence than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence.

Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted in order to render the sentence valid.

Sub-section (2). *Threatening or insubordinate language.* Where the charge is for threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed.

Expressions used merely for exculpation would not be punishable under this section. It has been ruled that "expressions, however offensive to a superior, that are used (1) in the course of a judicial inquiry, (2) by a party to that inquiry, and (3) upon a matter pertinent to and *bonâ fide* for the purposes of that inquiry as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge."

Expressions used *of* a superior officer and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under s. 40, and not under this section. But insubordinate or threatening language regarding one superior if used to (in the sense that it should be heard by) another superior is an offence under this section.

The words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably appear that they were intended to be heard by a superior.

As to the use of coarse and abusive language by a man when drunk, see Ch. III, paras. 30, 31; and for general observations on insubordinate language, see Ch. V, para. 86.

Improper language which does not amount to insubordinate language, or which cannot be proved to be used to a superior officer, must be charged under s. 40.

As to active service, see the beginning of note to section 6.

Superior officer. The court should be satisfied, before conviction, that the accused knew the person struck to be a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware of his being of superior rank, the intention being of the essence of the offence.

A charge alleging that the accused "attempted to strike" or "struck at" a superior officer, though objectionable as not following the words of the Act, has been held good.

The expression "superior officer" in this section means not only a superior in rank as defined by s. 190 (7), but also a senior in the same grade where that seniority gives power of command according to the usages of the service; but one private soldier can never be the "superior officer" of another.

Part I.
ss. 8–9.

A military policeman is not, as such, the superior officer of a private soldier.

See generally as to offences against superiors, K.R., para. 554.

Disobedience to superior officer.

9. (1.) Every person subject to military law who commits the following offence; that is to say,

Disobeys, in such manner as to show a wilful defiance of authority, any lawful command given personally by his superior officer in the execution of his office, whether the same is given orally, or in writing, or by signal, or otherwise,

shall on conviction by court-martial be liable to suffer death or such less punishment as is in this Act mentioned; and

(2.) Every person subject to military law who commits the following offence; that is to say,

Disobeys any lawful command given by his superior officer,

shall, on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Sub-section (1). *Disobeys in such manner . . any lawful command.* A charge under this sub-section would, as a rule, be reserved for trial by a general court-martial. The charge must specify the command, and that it was given personally, and must show the manner in which the disobedience showed a wilful defiance of authority; see Ch. III, paras. 8-10. The particulars should also show how the officer was in the execution of his office (see note to s. 8), but the court may make use of their military knowledge for determining whether the officer was in the execution of his office, and whether he was a superior officer who by virtue of his office was authorised to give such a command.

The command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay, or prevent a military proceeding. Thus a command given by an officer to his soldier-servant to perform some domestic office not relating to military duty is not a command within the meaning of this section. A soldier who refuses to take a letter relating to private theatricals upon the order of a non-commissioned officer does not disobey a lawful command.

Religious scruples furnish no excuse for disobedience.

The disobedience must be immediate or proximate to the command, and actual non-compliance must be proved. A man who says "I will not do it," does not necessarily disobey. A man who when ordered to do a duty at a future time says "I will not do it," does not thereby commit an offence under this section, though he may be liable under s. 8 (2). See Ch. III, para. 9.

Sub-section (2). *Disobeying lawful command.* To establish an offence under

this sub-section, it is not requisite to prove that the command was given personally by a superior. It is sufficient to show that it was given by the deputy or agent of a superior, whom, according to the usages of the service or otherwise, the accused might reasonably suppose to have been duly authorised to notify to him the command of his superior. But it must be a specific command to an individual, and must be given as being the command of a superior who by virtue of his office or otherwise was authorised to give such a command.

An omission arising from misapprehension or forgetfulness is not an offence under this section. The act of a soldier who declines to sign his accounts upon the ground that they are incorrect is not an offence under this section.

If obedience to the command were physically impossible, the failure to obey would not be an offence under this section.

[1] For the meaning of the expression "superior officer," see note to s. 8.

As to active service, see Ch. III, para. 33, and note to s. 6.

As to disobedience of general or garrison orders, see s. 11.

Insubordination.

10. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes, or uses or offers violence to, any such officer; or

(2.) Strikes, or uses or offers violence, to any persons, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer; or

(3.) Resists an escort whose duty it is to apprehend him or to have him in charge; or

(4.) Being a soldier breaks out of barracks, camp, or quarters,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

Paragraph (1). A person may be charged under this paragraph whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged also under s. 9. Only officers should be charged under this paragraph.

Paragraph (2). It will be observed that a charge may be made under this paragraph for assaulting a civilian policeman.

Paragraph (3). The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge.

Under this paragraph the resistance may be passive. A man lying down and refusing to move, if physically able to move, resists.

Paragraph (4). *Breaks out of barracks, &c.* This offence consists in a soldier quitting barracks, &c., at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a commanding officer in determining whether to deal with it as a mere breach of discipline under this

Part I. paragraph, or to reserve it for trial as amounting to desertion. The particulars of the charge must show that the absence from barracks, &c., was without permission, or otherwise unlawful.

s. 10–12.

If the charge be for breaking out of barracks, it must be proved that the accused left the confines of the barracks as charged, and so also if the charge is for breaking out of camp. A charge of breaking out of quarters would hold good in the case of a man improperly leaving one part of a barrack for another where he had no right to be.

Neglect to obey garrison or other orders.

11. Every person subject to military law who commits the following offence ; that is to say,

Neglects to obey any general or garrison or other orders,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and, if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Provided that the expression "general orders" in this section shall not include His Majesty's regulations and orders for the army, or any similar order in the nature of a regulation published for the general information and guidance of the army.

NOTE.

The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental, or of a like nature. Disobedience of a specific order in the nature of a command should be dealt with under s. 9, and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under s. 40.

Ignorance of the order is not an exculpation if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clearness in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. Disobedience of a K.R. may be punished under s. 40, but if a K.R. is published as a regimental order, it acquires also the character of a regimental order, and disobedience to it may be punished accordingly.

The offence of concealment of venereal disease is to be dealt with under this section. K.R. para. 462.

Desertion, Fraudulent Enlistment, and Absence without Leave.

Desertion.

12. (1.) Every person subject to military law who commits any of the following offences ; that is to say

(*a.*) Deserts or attempts to desert His Majesty's service ; or

(*b.*) Persuades, endeavours to persuade, procures or attempts to procure any person subject to military law to desert from His Majesty's service,

shall, on conviction by court-martial,

if he committed such offence when on active service or under orders for active service, be liable to suffer death, or such less punishment as is in this Act mentioned ; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment, or such less

punishment as is in this Act mentioned: and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) Where an offender has fraudulently enlisted once or oftener he may, for the purposes of trial for the offence of deserting or attempting to desert His Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(3.) For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section.

NOTE.

See Ch. III, paras. 13–20; K.R., paras. 514–546.

On active service. See beginning of note to s. 6.

The offence of fraudulent enlistment is dealt with in s. 13. As to a false statement by a soldier to his commanding officer that he has been guilty of desertion or fraudulent enlistment, see s. 27 (3).

For provisions as to inquiry into absence and confession of desertion or fraudulent enlistment, see ss. 72, 73; and as to liability to general service or transfer on conviction for, or confession of, desertion or fraudulent enlistment, see s. 83 (7); and as to liability to transfer of soldier delivered into military custody or committed by a court of summary jurisdiction as a deserter, see s. 83 (8); and as to descriptive reports of deserters, escorts, and generally, K.R., paras. 514–546.

A person charged with desertion may be found guilty of attempting to desert, or of being absent without leave, and a person charged with attempting to desert may be found guilty of desertion, or being absent without leave: s. 56 (3) (4).

If the accused is put on his trial for two offences of desertion, or for fraudulent enlistment and desertion, and it is desired that the higher punishment allowed for a second offence should be awarded, the charges must be on separate charge sheets, and the trials distinct, though they may be held before the same court. To enable the punishment of penal servitude to be awarded, the court must, of course, be a general court-martial. In other cases the general principles as to what may and what may not be included in the same charge sheet, laid down in the note to Rule 62 (A), will apply to the offences of desertion and fraudulent enlistment equally as to other offences.

The case is similar where the charge is for fraudulent enlistment under s. 13; but in that case, if he has deserted first, and fraudulently enlisted afterwards, he cannot be awarded the higher punishment unless he has served between the date of the desertion and the date of the fraudulent enlistment. See s. 13 (2) (3).

For example, if a soldier deserted on the 1st of October, 1904, and was apprehended, convicted, and punished, and after undergoing his punishment

Part I. ss. 12-13.

returns to the ranks, and on the 10th of March, 1907, fraudulently enlists, then, on conviction for such fraudulent enlistment, he can be sentenced to penal servitude, just as if the former conviction for desertion had been a conviction for fraudulent enlistment.

If, however, a soldier thus deserts on the 5th of January, 1907, and is not apprehended, and on the 15th of February, while still in a state of desertion, fraudulently enlists, then, although he may be convicted both of the desertion and of the fraudulent enlistment, he cannot be sentenced to penal servitude for the fraudulent enlistment, as the desertion was his absence "next before the fraudulent enlistment," and the exception in s. 13 (3) applies.

Where the desertion and fraudulent enlistment form in effect one transaction, the man should not as a rule be tried for both offences.

Any person who falsely represents himself to any authority to be a deserter may be punished by a civil court of summary jurisdiction by three months' imprisonment (s. 152); see also as to punishment by a like court of persons inducing soldiers to desert, s. 153; and as to the apprehension of deserters, s. 154.

To establish desertion it is necessary to prove some circumstance justifying the inference that the accused intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service, embarkation for foreign service, or service in aid of the civil power.

Attempt to desert.—To establish an attempt to desert, some act which, if completed, would constitute desertion, as above mentioned, must be proved. A mere intention to desert does not amount to an attempt to desert.

Fraudulent enlistment.

13. (1.) Every person subject to military law who commits any of the following offences; that is to say,

(*a.*) When belonging to either the regular forces, or the militia or Territorial Force when embodied, or the yeomanry when called out for actual military service, without having obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist or enrol, enlists or enrols himself in His Majesty's regular forces, or in any force raised in India or a colony, or

(*b.*) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrols himself, or enlists in the militia or Territorial Force, or in any of the reserve forces, not subject to military law, or enters the Royal Navy,

shall be deemed to have been guilty of fraudulent enlistment, and shall on conviction by court-martial be liable—

(i.) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned; and

(ii.) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) When an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been

appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(3.) Where an offender is convicted of the offence of fraudulent enlistment, then, for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting, or attempting to desert, His Majesty's service, may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not, upon his conviction for that fraudulent enlistment, be reckoned as a previous offence of deserting or attempting to desert.

NOTE.

The charge must specify the force to which the accused belonged at the time of his enlistment. A militiaman enlisting when the militia is not embodied, or a yeoman enlisting when the yeomanry have not been called out for actual military service, cannot be charged under this section, though he may be charged under s. 33 for making a false answer. See also as to militiamen and yeomen, 45 & 46 Vict. c. 49, s. 26, K.R. paras. 529–531.

Sub-section (1) (*a*) has been amended by the Army (Annual) Act, 1906, so as to cover the case of fraudulent enlistment into any Indian or Colonial force.

Sub-section (1) (*b*) covers the case of a soldier who enters the Royal Navy, but not of a sailor who enlists in the army. The latter case can be dealt with under s. 33.

Where a soldier is charged with fraudulent enlistment, by reason of which he has obtained a free kit, the receipt of that free kit must be mentioned in the charge and proved in evidence in order to enable the court to sentence him to a deduction from his pay as compensation for the free kit, but the charge of fraudulently obtaining a free kit cannot by itself be maintained; see K.R., para. 561, and Rules, First Appendix, Note as to use of Forms of Charges (23), p. 532.

Where the fraudulent enlistment has taken place more than three years before the trial, the obtainiug of a free kit should not be mentioned in the charge, as a sentence of stoppages based upon that circumstance is illegal.

A copy or duplicate of the attestation paper is proof of the enlistment, and the issue of a free kit may be proved by a copy of a record thereof in the regimental books (s. 163 (1), (*g*) and (*h*)).

Sub-section (3). As to conviction for two offences, and the punishment for the second offence, see note to s. 12.

Assistance of or connivance at desertion.

14. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Assists any person subject to military law to desert His Majesty's service; or

(2.) Being cognisant of any desertion or intended desertion of a

Part I.
ss. 14–15.

person subject to military law, does not forthwith give notice to his commanding officer, or take any steps in his power to cause the deserter, or intending deserter, to be apprehended,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Paragraph (1). It must be proved that the accused knew that the assistance given by him was for the purpose of the desertion.

Paragraph (2). *Does not forthwith give notice.* The time at which the accused became cognisant of the desertion, and, if he gave notice to his commanding officer, the time at which he gave notice, are material and should be specified in the charge.

Commanding officer. This includes any person having military command over the accused. The court may use their military knowledge in determining whether the person is for this purpose a commanding officer or not. See note to s. 7 (4).

If the charge is under the latter part of (2), the charge must allege the steps which it was in the power of the accused to take in order to cause the deserter, or intending deserter, to be apprehended.

Absence from duty without leave.

15. Every person subject to military law who commits any of the following offences: that is to say,

(1.) Absents himself without leave; or

(2.) Fails to appear at the place of parade or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity quits the ranks; or

(3.) Being a soldier, when in camp or garrison, or elsewhere, is found beyond any limits fixed or in any place prohibited by, any general, garrison, or other order, without a pass or written leave from his commanding officer; or

(4.) Being a soldier, without leave from his commanding officer, or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Paragraph (1). *Absents himself.* See Ch. III, paras. 13–19; and for the power of summary award of detention by the commanding officer see s. 46 (4) (5).

In charges under this section, if the absence or failure to appear or other act is proved, it will lie on the accused to show that he had leave or was under urgent necessity and had due cause for the absence, failure, or other act. A soldier tried for desertion or attempted desertion may, under s. 56, be found guilty of absence without leave. When a soldier has been absent without leave for 21 clear days a court of inquiry will be assembled: s. 72.

The absence must be from military supervision, *i.e.*, the place where it is the soldier's duty to be, and where he can be found if wanted. Usually it must be absence from his barrack, camp, or station, but if his duty is to be in one part of the barrack, or he cannot be found when wanted, his absence from a part only of the barrack may amount to absence without leave.

If the hour of his absence is material for the purpose of proving a day's absence (see s. 138 and note, and s. 140), the hours of his departure and return must be stated in the particulars.

Involuntary absence, caused, for example, by disability through being ill or being kept in custody by the civil power, even though arising from the wrongful act of the accused, is not an offence under this section.

Where the absence was originally voluntary and subsequently becomes involuntary the length of the absence without leave must be reckoned only to the time when the absence becomes involuntary.

Under paragraph (2) the particular parade should be specified, so that the accused may be able to show, if he can, that he was not by order or custom, or for other reasons, bound to attend that parade.

Under paragraph (3) ignorance of the order, though it would properly tend to mitigate the punishment, does not entirely exculpate the accused. But misapprehension reasonably arising from want of clearness in the order may be a ground of exculpation.

A man absent without leave is not also liable to trial for failing to attend parades, &c., during the period of his absence, and if he is tried on alternative charges for both offences, he can be convicted only upon one of the charges.

Paragraphs (3) and (4). *Commanding officer.* Any officer having military command over the accused and authority to grant leave will be commanding officer within these paragraphs. This matter can therefore be determined by the military knowledge of the court.

Disgraceful Conduct.

Scandalous conduct of officer.

16. Every officer who, being subject to military law, commits the following offence ; that is to say,

behaves in a scandalous manner, unbecoming the character of an officer and a gentleman,

shall on conviction by court-martial be cashiered.

NOTE.

An act or neglect which amounts to any of the offences specified in the Act or which is to the prejudice of good order and military discipline, ought not, as a rule, to be tried under this section. Scandalous conduct may be either of a military or social character. But a charge of a social character is not to be preferred under this section, unless it is of so grave a nature as to render the officer unfit to remain in the service, and therefore is scandalous in respect of his military character. Social misconduct which is not so grave as to bring scandal on the service, should not be made a ground of charge against an officer, but may well form the subject of reproof and advice on the part of his commanding officer or some other superior officer.

It will be noticed that there is no power to award any other punishment than cashiering on conviction for this offence.

Fraud by persons in charge of moneys or goods.

17. Every person subject to military law who commits any of the following offences; that is to say,

Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently

Part I.
ss. 17-18.

misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods, shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

NOTE.

The distinction between stealing and the other offences is roughly this—that a man is not said to steal a thing if, previously to the time at which he converted it to his own use, he was lawfully in possession of it. See Ch. VII, paras. 56, 57, 58.

This section does not apply to ordinary thefts, which are dealt with in s. 18 (4), but to those more serious offences committed by persons in a position of trust in relation to public or regimental property, where placed under their charge. The severe punishment of penal servitude can therefore be given. Under s. 56 a person charged with stealing may be found guilty of embezzlement or of fraudulent misapplication; and a person charged with embezzlement may be found guilty of stealing or of fraudulent misapplication.

If the charge is for fraudulent misapplication or embezzlement it must allege that the property was improperly applied for the use of the accused himself or some person connected with him, and not for a public purpose.

If no evidence is forthcoming as to the particular mode of misapplication, the court may, in the absence of explanation from the accused, infer that the property was misapplied from the fact of its not having been properly applied. See Ch. VII, para. 59.

Each instance of embezzlement should be in a separate charge. See p. 543, Note.

A mere error or irregularity in accounts, or a mistaken misapplication of money or goods, does not constitute an offence under this section. There must be an intent to defraud on the part of the accused, either for the benefit of himself or somebody else; and this must be particularly recollected in the case, for example, of a non-commissioned officer's accounts getting into confusion, through the neglect or carelessness of superiors.

The charge must show in detail that the accused was charged with or concerned in the care or distribution of the money or goods which are alleged to have been fraudulently misapplied or embezzled, but the court may use their military knowledge to determine that the accused, if holding a particular office, was, by virtue of his office, so charged or concerned. A soldier posted as sentry over a place containing public property, would not be "charged with" the care of the property within the meaning of this section.

The expression "charged with" means officially charged with, that is to say, in virtue of the public office the accused formally holds. A corporal or private entrusted by a pay-serjeant for his own convenience with public money would not fall under this section, although he might be convicted under s. 18.

As to court of inquiry on discovery of loss of stores, &c., see K.R., paras. 668, 669.

Disgraceful conduct of soldier.

18. Every soldier who commits any of the following offences; that is to say,

(1.) Malingers, or feigns or produces disease or infirmity; or

(2.) Wilfully maims or injures himself or any other soldier, whether at the instance of such other soldier or not, with

intent thereby to render himself or such other soldier unfit for service, or causes himself to be maimed or injured by any person, with intent thereby to render himself unfit for service; or

(3.) Is wilfully guilty of any misconduct, or wilfully disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates disease or infirmity, or delays its cure; or

(4.) Steals or embezzles or receives, knowing them to be stolen or embezzled, any money or goods the property of a comrade or of an officer, or any money or goods belonging to any regimental mess or band, or to any regimental institution, or any public money or goods; or

(5.) Is guilty of any other offence of a fraudulent nature not before in this Act particularly specified, or of any other disgraceful conduct of a cruel, indecent, or unnatural kind,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

A soldier convicted of an offence under this section forfeits all good conduct badges, and is placed in the same position as regards earning badges as a recruit. Pay Warrant, 1907, article 1023.

Paragraphs (1)–(3). The charge should show in what way a soldier has malingered, or what disease or infirmity he has feigned or produced, or what particular injury has been committed, or of what misconduct or wilful disobedience he has been guilty. In a case under paragraph (2) evidence will have to be given of the intent, but if the act is shown to have been done wilfully and not accidentally, the intent may be presumed.

Feigning. This term means not merely that a soldier reported himself sick when he was not sick, but that he reported himself sick when he *knew* that he was not sick, and that he feigned or pretended certain symptoms which the medical officer was satisfied did not exist.

Malingering is a feigning of disease, but of a more serious nature; implying some deceit, such as the previous application of a ligature, or of the taking of some drug, or some other act which, though it did not actually produce disease or retard a cure, yet produced the appearance of the disease said to exist.

The misconduct under paragraph (3) must be with the intent of producing or aggravating the disease, or delaying the cure, as the case may be. The involuntary production, aggravation, or prolongation of *delirium tremens* by intemperate habits, or of venereal disease by immoral conduct, does not render a soldier liable under this paragraph.

Paragraph (4). See note on s. 17.

It is not material to whom the property belongs, provided it is shown to belong to a comrade, officer, regimental mess, regimental band, or regimental institution. If it turns out that the property belongs to some person or persons not included in the above description, the accused must be acquitted, as the offence could in that case only be charged under s. 41.

If a man steals the uniform coat of his comrade, he can be charged with stealing it either as being public property or as being the property of his comrade; for although the coat is public property, yet the comrade has posses-

Part I. ss. 18–19.

sion of it, so hat the thief may be charged with stealing the property of a comrade. Ch. VII, para. 56.

In charges under this paragraph, the value of articles in respect of which the offender should be sentenced to stoppages must always be stated in the particulars of the charge: see Rule 11 (F) and note, and K.R., para. 563.

It has been ruled by the Judge-Advocate-General that a Branch of the Royal Army Temperance Association is not a regimental institution within the meaning of this paragraph.

Paragraph (5). A charge under this paragraph for anything that is an offence under any previous enactment of the Act will be bad.

Of a fraudulent nature. The particulars must show that there was fraud in the act with which the accused is charged, amounting to a crime according to the ordinary criminal law; and any mere misappropriation of money or irregularity in accounts will not be sufficient to support a charge under this paragraph.

Disgraceful conduct. The charge must specify the details of the particular act or acts alleged to constitute the disgraceful conduct.

Drunkenness.

Drunkenness.

19. Every person subject to military law who commits the following offence; that is to say,

The offence of drunkenness, whether on duty or not on duty, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to, or in substitution for, any other punishment, to pay a fine not exceeding one pound.

NOTE.

If there is any doubt as to whether the offence was committed on duty or not on duty, it will be better to prefer a charge of simple "druukenness"; the evidence as to the attendant circumstances will be a guide to the court in considering the sentence.

See also Ch. III, paras. 25–30, and s. 46 (2) (3), and note.

Offences in relation to Persons in Custody.

Permitting escape of person in custody.

20. Every person subject to military law who commits any of the following offences; that is to say,

(1.) When in command of a guard, picket, patrol, or post, releases without proper authority, whether wilfully or otherwise, any person committed to his charge; or

(2.) Wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard,

shall on conviction by court-martial be liable if he has acted wilfully to suffer penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE.

In a charge under paragraph (1), if proof is given that the person in custody was released, the accused must show the authority under which he acted. The court may use their military knowledge with respect to whether the authority alleged was or was not sufficient.

In a charge under paragraph (2), if there is a doubt as to the accused having acted *wilfully*, he should be charged with having acted *without reasonable excuse*, or he may be charged with having acted wilfully, and in an alternative charge with having acted without reasonable excuse. See s. 56 (5), and note.

Under paragraph (2), where an escort consisting of a corporal and a private lose the soldier in their charge, the corporal is liable to conviction unless he can prove that the escape took place in circumstances against which he could not reasonably guard. The private would be guilty, upon proof that he shared in the wilful act or negligence of the corporal, or that the soldier while committed to his charge during the temporary and necessary absence of the corporal was allowed to escape, unless he could show that he used all reasonable means to guard against the escape. In the latter case the corporal would not be guilty if he could show that his temporary delegation of his duty to the private was occasioned by some necessary cause, and that he took reasonable precautions for the safe custody of the soldier during his absence.

A man commits this offence wilfully by any act or omission, the reasonable and probable consequence of which would be the escape of the person committed to his charge, or whom it was his duty to guard or keep.

A man who, having completed a term of imprisonment or detention is being conducted from the prison or detention barrack to rejoin his regiment is not committed to the charge of the soldiers conducting him within the meaning of this section.

Irregular arrest or confinement.

21. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(2.) Having committed a person to the custody of any officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, into whose custody the person is committed, an account in writing signed by himself of the offence with which the person so committed is charged; or

(3.) Being in command of a guard, does not, as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give in writing to the officer to whom he may be ordered to report that person's name and offence so far as known to him, and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Part I.
ss. 21-24.

NOTE.

The prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement to trial or brought his case before the proper authority for investigation. If these are proved it will lie on the accused to prove the necessity for keeping the person in question in custody.

See note to s. 45; and as to entry of charge in guard report, K.R., para. 485.

Escape from confinement.

22. Every person subject to military law who commits the following offence; that is to say,

Being in arrest or confinement, or in prison or otherwise in lawful custody, escapes, or attempts to escape,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

As to arrest and confinement, see Ch. IV, paras. 1–17.

An escape may be either with or without force or artifice, and either with or without the consent of the custodian.

Offences in relation to Property.

Corrupt dealings in respect of supplies to forces.

23. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or

(2.) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of His Majesty's forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Deficiency in and injury to equipment.

24. Every soldier who commits any of the following offences; that is to say,

(1.) Makes away with, or is concerned in making away with (whether by pawning, selling, destruction or otherwise howsoever) his arms, ammunition, equipments, instruments, clothing, regimental necessaries, or any horse of which he has charge; or

(2.) Loses by neglect anything before in this section mentioned; or

(3.) Makes away with (whether by pawning, selling, destruction, or otherwise howsoever) any military decoration granted to him; or

(4.) Wilfully injures anything before in this section mentioned or

any property belonging to a comrade, or to an officer, or to any regimental mess or band, or to any regimental institution, or any public property; or

(5.) Ill-treats any horse used in the public service,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

For the purposes of this section, the expression "equipments" includes any article issued to a soldier for his use, or entrusted to his care for military purposes.

NOTE.

As to a charge under this section, see K.R., paras. 562–566; Rules, First App. Note as to use of Forms of Charges, para. (23), p. 532 below. As to liability of civilian pawnbroker, &c., see s. 156.

Paragraph (1). This paragraph shows clearly that, whether arms are pawned, sold, destroyed, or otherwise made away with, the military offence is the same, namely, the making away with them; but the degree of the offence may differ according as they have been pawned, sold, or destroyed, or otherwise made away with, and the punishment awarded may vary accordingly.

A charge under this or the next paragraph of making away with, &c., money or property not mentioned in these paragraphs would be bad, though if the act amounted to stealing or embezzlement it would be punishable under s. 18, or if there was proof of any wilful act or neglect, the soldier might be charged with an offence under s. 40.

Making away with is distinct from theft, as it applies only to goods in a man's own possession, and which, therefore, he cannot in law steal. Unless there is some positive act of pawning, sale, &c., a charge for making away with should not be preferred, but a charge of losing should be preferred under paragraph (2). See note to s. 17, and K.R., paras. 562, 563.

Equipments. The definition of this word at the end of the section will include such articles as blankets and barrack furniture.

Clothing includes clothing supplied to a man in hospital.

Paragraph (2). This is not intended to punish a soldier for a deficiency in his kit occasioned by accident or mere carelessness rather than by culpable neglect. On the other hand, the fact that a man has not got his arms, regimental necessaries, &c., at a time when it was his duty to have them, is *prima facie* evidence of his having lost them by neglect, and the court may call on him to show that the loss was not occasioned by any fault on his part.

Paragraph (3). *Military decoration.* This includes any medal, clasp, good-conduct badge, or decoration. Section 190 (18). Losing by neglect a military decoration is not an offence.

Paragraph (4). *Wilfully injures.* A charge for injuring the property here mentioned must be laid under this section, and not under section 41. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the arms &c., or was mere carelessness. In the latter case no offence under this section would be committed. The regulation value will be taken (without evidence) to be the value of any article lost or damaged, which being a part of military equipment has a regulation value.

As to disqualification for sitting on a court to try an offence under this paragraph, see Rule 19 (B) (v) and note.

Part I.

ss. 24-26.

Paragraph (5). A soldier groom who ill-treats the charger kept for military purposes of a mounted infantry officer will bring himself within this paragraph. "Horse" includes mule and other beasts of burden or draught. Section 190 (40).

Offences in relation to False Documents and Statements.

Falsifying official documents and false declarations.

25. Every person subject to military law who commits any of the following offences; that is to say,

(1.) In any report, return, muster roll, pay list, certificate, book, route, or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy—

(*a.*) Knowingly makes or is privy to the making of any false or fraudulent statement; or

(*b.*) Knowingly makes or is privy to the making of any omission with intent to defraud; or

(2.) Knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters, or makes away with, any document which it is his duty to preserve or produce; or

(3.) Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration,

shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

The court may use their military knowledge in determining any question as to the duty of the accused in a case arising under this section.

A trivial error in a report should not, in the absence of fraud or bad faith, be made the ground of a charge under paragraph (1) (*a*).

In a charge under paragraph (1) (*b*) or paragraph (2) of intent to defraud, it will not necessary to show an intent to defraud the government or a particular individual, so long as an intent to defraud is shown.

A charge under paragraph (2) or (3) should show why it was the accused's duty to preserve the document or to make the declaration; but where the situation of the accused is proved, the court may use their military knowledge to infer his duty.

Paragraph (3) does not include statements in a summary of evidence or verbal statements.

Neglect to report and signing in blank.

26. Every person subject to military law who commits any of the following offences; that is to say,

(1.) When signing any document relating to pay, arms, ammunition, equipments, clothing, regimental necessaries, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher; or

(2.) Refuses, or by culpable neglect omits, to make or send a report or return which it is his duty to make or send,

shall on conviction by court-martial be liable, if an officer, to be

cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Paragraph (2). The charge must show that it was the duty of the accused to make the report or return. If the report or return was one for which the superior had no right to call, there is no punishment for a refusal to make it. The neglect must be something more than mere forgetfulness or mistake.

False accusation, or false statement by soldier.

27. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Being an officer or soldier, makes a false accusation against any other officer or soldier, knowing such accusation to be false; or

(2.) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts; or

(3.) Being a soldier, falsely states to his commanding officer that he has been guilty of desertion or of fraudulent enlistment, or of desertion from the Navy, or has served in and been discharged from any portion of the regular forces, reserve forces, or auxiliary forces, or the Navy; or

(4.) Being a soldier, makes a wilfully false statement to any military officer or justice in respect of the prolongation of furlough,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Paragraph (1). A mere false statement, not involving an accusation, is not within this paragraph.

Paragraph (3). *To his commanding officer.* It is not enough for the statement to be made merely to a superior officer; but the term "commanding officer" will include any one whose duty it would be under the King's Regulations or according to the custom of the service to deal with a charge of desertion or fraudulent enlistment, if it were made against the soldier. A written statement made to any person for the purpose of being laid before the commanding officer is a statement to the commanding officer.

Paragraph (4). *Prolongation of furlough.* A justice has power under s. 173 to extend furloughs in certain cases for a month.

Offences in relation to Courts-Martial.

Offences in relation to courts-martial.

28. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Being duly summoned or ordered to attend as a witness before a court-martial, makes default in attending; or

(2.) Refuses to take an oath or make a solemn declaration legally required by a court-martial to be taken or made; or

Part I. s. 28.

(3.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or

(4.) Refuses, when a witness, to answer any question to which a court-martial may legally require an answer; or

(5.) Is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court,

shall on conviction by a court-martial, other than the court in relation to or before whom the offence was committed, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned:

Provided that where a person subject to military law is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, that court, if they think it expedient, instead of the offender being tried by another court-martial, may, by order under the hand of the president, order the offender to be imprisoned, with or without hard labour, or, in the case of a soldier, to undergo detention, for a period not exceeding twenty-one days.

NOTE.

See generally as to summoning and attendance of witnesses, Rules 14, 75–78.

An offence under this section is not triable by the court in relation to or before whom it was committed, except that for contempt of court by a person subject to military law the court may order him to be imprisoned, or, if he is a soldier, to undergo detention, for not more than 21 days. (See Rule 59, note.) If the offender is a soldier, he will, as a general rule, be sentenced to detention and not to imprisonment. For form of commitment, see Form U, p. 598 *infra*.

As a rule courts should accept an apology sufficient to vindicate their dignity without resorting to the extreme measure of imprisonment.

Civilians guilty of the offences mentioned in this section are punishable by a civil court under s. 126.

Paragraph (1). The court is formed when the members are assembled, even before they are sworn, and anything which would be a contempt after the court was sworn would be a contempt once the members are assembled.

Paragraph (5). The interruption or disturbance need not be caused within the precincts of the court itself, if the circumstances are such as to constitute a contempt of court.

Proviso. The enactments of s. 47 (5) and s. 48 (6) which prohibit a regimental or district court from trying an officer, would not exempt an officer guilty of contempt of such a court from liability to be committed to prison by the court under this proviso; but the correct course for the court would almost invariably be to adjourn and report to the proper authority. The summary proceeding for contempt is not a trial, and the offence being as a rule committed in view of the court, opportunity should be given to the offender to offer any explanation of, or excuse for, his conduct, but no further inquiry will be necessary. The order of the court does not require confirmation.

To imprison or send to detention for contempt of court a person who is under trial, though legal, requires very exceptional circumstances to justify

it; punishment so inflicted must immediately follow the contempt, and cannot be an addition to any sentence after conviction, or be ordered to commence at the date of the expiration of the punishment under the sentence. The court must adjourn until the expiration of the punishment inflicted for the contempt.

False evidence.

29. Every person subject to military law who commits the following offence; that is to say,

When examined on oath or solemn declaration before a court-martial, or any court or officer authorised by this Act to administer an oath, wilfully gives false evidence,

shall be liable on conviction by court-martial to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Accidental or trifling mistakes or discrepancies in evidence will not be made the subject of a charge under this section.

The production of the proceedings of the court-martial before which the false swearing is alleged to have taken place is not enough to prove that the accused swore as charged. The member of the court who recorded the proceedings, or some person from personal knowledge must prove this. The evidence of one witness without corroboration in some material respect is not sufficient to prove the falsehood of the matter sworn. (See Ch. VII, para. 72.)

This section will be applicable to an accused person who applies to give evidence himself, but a charge should not be preferred against him except in a very flagrant case.

As the Act (s. 70 (5)), and the Rules of Procedure (Rule 124 (H)) now provide that evidence may be given on oath before a court of inquiry, a person who wilfully gives false evidence on oath before such a court is guilty of an offence under this section.

Offences in relation to Billeting.

Offences in relation to billeting.

30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting); that is to say,

(1.) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse is billeted; or

(2.) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same; or

(3.) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses, have been billeted, or to the making up and transmitting of an account of the money due to such person; or

(4.) Wilfully demands billets which are not actually required for some person or horse entitled to be billeted; or

(5.) Takes, or knowingly suffers to be taken, from any person any money or reward for excusing or relieving any person from

Part I.

s. 30-31.

his liability in respect of the billeting or quartering of officers, soldiers, or horses, or any part of such liability; or

(6.) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty; or

(7.) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billeted upon him in pursuance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

The provisions as to the billeting of officers and soldiers are contained in Part III, ss. 102-111, and ss. 119-121.

See s. 111 as to the jurisdiction of magistrates to deal with officers or soldiers guilty of offences under this section.

Paragraph (4). *Wilfully demands.* The demand constitutes the offence, and it is immaterial whether the billet is actually obtained or not.

Offences in relation to Impressment of Carriages.

Offences in relation to the impressment of carriages, and their attendants.

31. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages); that is to say,

(1.) Wilfully demands any carriages, animals, or vessels, which are not actually required for the purposes authorised by this Act; or

(2.) Fails to comply with the provisions of this Act relating to the impressment of carriages as regards the payment of sums due for carriages or as regards the weighing of the load; or

(3.) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages, to travel against the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than he is required by the said provisions to carry; or

(4.) Does not discharge as speedily as practicable any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages; or

(5.) Compels the person in charge of any such carriage, animal, or vessel, or permits him to be compelled, to take thereon

any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person; or

(6.) Ill-treats or permits such person in charge to be ill-treated; or

(7.) Uses or offers any menace to or compulsion on, a constable to make him provide any carriage, animal, or vessel, which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, or vessels, or tending to induce him to do anything contrary to his said duty; or

(8.) Forces any carriage, animal, or vessel, from the owner thereof,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

The provisions as to the impressment of carriages are contained in Part III, ss. 112–121.

As to the jurisdiction of magistrates to deal with officers and soldiers guilty of these offences, see s. 118.

Offences in relation to Enlistment.

Enlistment of soldier or sailor discharged with ignominy or disgrace.

32. (1.) Every person having become subject to military law, who is discovered to have committed the following offence; that is to say,

Having been discharged with disgrace from any part of His Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the regular forces without declaring the circumstances of his discharge or dismissal,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) For the purpose of this section, the expression "discharged with disgrace from any part of His Majesty's forces" means discharged with ignominy, discharged as incorrigible and worthless, discharged for misconduct, or discharged on account of conviction for felony or of a sentence of penal servitude.

NOTE.

Having become subject, i.e., having signed the declaration and taken the oath, s. 80 (4) (*b*). The wording in this and the next section is different from that in other sections ("every person subject, &c., who commits," &c.), because at the moment of committing the offence the man is not actually subject to military law.

Enlisted. The original or the duplicate attestation paper must be produced at the trial.

Part I. ss. 32–34.

It is held that the non-declaration is *prima facie* proved by the attestation paper so produced showing answers to have been ven inconsistent with such declaration.

A man who can show that when discharged he was not (from not having had a discharge certificate given him or for any other reason) made acquainted with the fact that his discharge was for one of the reasons constituting disgrace, ought not to be convicted under this section.

For misconduct. These words, which were added by the Army (Annual) Act, 1893, are not found in the corresponding section (10 (3)) of the Militia Act, 1882.

False answers or declarations on enlistment.

33. Every person having become subject to military law who is discovered to have committed the following offence; that is to say,

To have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by, or by direction of, the justice before whom he appears for the purpose of being attested,

shall on conviction by court-martial be liable to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE.

Having become subject. See note to the preceding section.

Attestation paper. The original or the duplicate must be produced at the trial.

The answer must be wilfully false; thus where a man might reasonably have been mistaken as to the fact of his having "served," where, for instance, he was discharged as unfit before he had done duty or worn a uniform, a conviction would not hold good.

A false answer as to age, as a rule, should not be made the subject of a charge.

Men enlisting after being dismissed from the Navy as "objectionable," or under any other circumstances (except "with disgrace," as to which see s. 32 (1)) will be proceeded against under this section.

General offences in relation to enlistment.

34. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Is concerned in the enlistment for service in the regular forces of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against this Act; or

(2.) Wilfully contravenes any enactments or the regulations of the service in any matter relating to the enlistment or attestation of soldiers of the regular forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

So circumstanced, i.e., discharged with disgrace, so that he commits an offence under s. 32; or, belonging to the regular forces, or otherwise, so that he is guilty of fraudulent enlistment under s. 13, or of making a false answer under s. 33.

A recruiter who counsels, or connives at, an offence against s. 33 on the part of a recruit, falls within paragraph (1), as the attestation is part of the process of enlistment.

Miscellaneous Military Offences. Part I.

ss. 35–37.

Traitorous words.

35. Every person subject to military law who commits the following offence; that is to say,

Uses traitorous or disloyal words regarding the Sovereign,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

The words used are to be set out in the charge; they may be either spoken, or written, or published. It is not intended that mere violent or vulgar language used by a man under the influence of liquor should be punished under this section.

Injurious disclosures.

36. Every person subject to military law who commits the following offence; that is to say,

Whether serving with any of His Majesty's forces or not, without due authority, either verbally or in writing, or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or stores thereof, or any preparations for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to His Majesty's service,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

The unauthorised communication of intelligence to the enemy on active service is punishable under s. 5 (4).

A charge under this section must show how and when effects injurious to His Majesty's service were produced.

As to injurious disclosures by private letters, see note to s. 5 (4); and, as to publishing military information, K.R., para. 453.

Ill-treating soldier.

37. Every officer or non-commissioned officer who commits any of the following offences; that is to say,

(1.) Strikes or otherwise ill-treats any soldier; or

(2.) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Paragraph (1). Forcing or striking a soldier when acting as sentinel is punishable under s. 6 (1) (*d*) more severely than the mere striking a soldier.

Part I.
ss. 37–40.

As the word "soldier" includes non-commissioned officer, it follows that the offence of one non-commissioned officer striking or ill-treating another who is not his superior falls within this section. Striking a superior officer is an offence dealt with under s. 8.

Duelling and attempting to commit suicide.

38. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Fights, or promotes or is concerned in, or connives at, fighting a duel; or

(2.) Attempts to commit suicide,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

An officer carrying a challenge is punishable under paragraph (1).

If death ensued, the surviving principal in the duel and both the seconds might be tried and convicted for murder.

As to attempts to commit suicide, see ch. VII, para. 54, note (*b*).

Refusal to deliver to civil power officers and soldiers accused of civil offences.

39. Every person subject to military law who commits any of the following offences; that is to say,

On application being made to him, neglects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

This offence may be committed not only in the United Kingdom, but in any colony or possession where there is a civilian judicature. An officer or soldier to whom an application is made under this section may require to see the warrant or other authority for the delivery over or apprehension; and if none exists, no offence is committed by refusing the demand.

Conduct to prejudice of military discipline.

40. Every person subject to military law who commits any of the following offences; that is to say,

Is guilty of any act, conduct, disorder, or neglect, to the prejudice of good order and military discipline,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Act, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to

the person charged, by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction.

NOTE.

See Ch. III, para. 32.

To sustain a charge under this section it is absolutely necessary that the charge should recite the words of the Act. That is to say, there must be charged an "act" or "conduct," or "disorder," or "neglect," as the case may be, "to the prejudice of good order and military discipline."

But the mere use of these words as a description of certain conduct does not warrant a court in assuming that such conduct is legally an offence. A court is not warranted in convicting unless of opinion that the conduct charged (1) was committed by the accused, and (2) was to the prejudice both of good order and of military discipline, having regard to the conduct itself and to the circumstances in which it took place. It is only in this latter case that an offence of a non-military character falls within this section. Other offences of a non-military character, if tried at all under the Act, should be tried under s. 41.

Neglect must be wilful or culpable, and not merely arising from ordinary forgetfulness or error of judgment, or inadvertence; and where the use of certain words regarding superiors is made the subject of a charge under this section, the words must have been said meaningly, *i.e.*, with a guilty intent.

Attempts to commit most of the purely military offences under the Act are triable under this section, except where such attempts are (*e.g.*, an attempt to desert) specifically provided for.

A charge of displaying the white flag in the presence of the enemy is to be framed under this section: K.R., para. 555; as also a charge of improperly possessing a comrade's property, where there is no evidence of theft: K.R., para. 556.

Offences punishable by ordinary Law.

Offences punishable by ordinary law of England.

41. Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned, shall be deemed to be guilty of an offence against military law, and, if charged under this section with any such offence (in this Act referred to as a civil offence), shall be liable to be tried by court-martial, and on conviction to be punished as follows; that is to say,

(1.) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned; and

(2.) If he is convicted of murder, be liable to suffer death; and

(3.) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

(4.) If he is convicted of rape, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

Part I. s. 41.

(5.) If he is convicted of any offence not before in this section particularly specified, which when committed in England is punishable by the law of England, be liable whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided as follows :—

(*a.*) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape, committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape, committed in any place within His Majesty's dominions, other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court :

(*b.*) A person subject to military law when in His Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law.

NOTE.

Subject to such regulations, &c. See provisos (*a*) and (*b*).

As to the cases in which the jurisdiction given by this section should be exercised, see Ch. VII, paras. 1–3.

This section in effect gives absolute jurisdiction to a court-martial to try any civil offence, except that a court-martial cannot try treason, murder, manslaughter, treason-felony, or rape, committed in the United Kingdom; and can only try these offences if committed in any place within the King's dominions, other than the United Kingdom and Gibraltar, if either the offender was on active service, or the place is more than one hundred miles from any city or town in which the offender can be tried for such offence by a competent civil court.

For definition of active service, see s. 189.

Where a civil offence is specified in the Act (*e.g.*, ss. 17, 18), an attempt to commit that offence can under (5) be ordinarily tried by court-martial, because by English law an attempt to commit a civil offence is ordinarily in itself an offence. See Ch. VII, para. 23.

A field general court-martial under s. 49 (3) has jurisdiction to try any offence; but where the offence is not committed on active service, such a court can only be convened for its trial in the cases specified in s. 49 (1) (*a*).

See also note to Rule 11 (A)–(C), as to the form of charges under this section.

Redress of Wrongs.

Mode of complaint by officer.

42. If an officer thinks himself wronged by his commanding officer, and, on due application made to him, does not receive the redress to which he may consider himself entitled, he may complain to the Commander-in-Chief in order to obtain justice, who is hereby required to examine into such complaint, and through a Secretary of State make his report to His Majesty in order to receive the directions of His Majesty thereon.

NOTE.

It is the custom of the service to forward every complaint through the officer commanding the regiment; and an officer would not be justified in deviating from this course, unless the commanding officer should refuse, or unreasonably delay, to forward it. An officer, on addressing himself directly to the general in command, should apprise his commanding officer of his doing so, and must observe in the channel of approach to the Commander-in-Chief each intermediate gradation of command.

Although the Commander-in-Chief is required to examine into the complaint and report to His Majesty, he is not debarred from expressing his own view of the case. Even an expression of opinion by the intermediate general officer will in many cases suffice to render further steps unnecessary. An officer should not be disposed to push to extremes his right to bring his complaint before the Sovereign. The report to His Majesty is to be made through the Secretary of State, the constitutional adviser of the Crown.

This section does not appear to limit the right of the Sovereign to receive complaints, but only to control the manner in which officers thinking themselves wronged are to approach the Sovereign. Therefore, although there may be no Commander-in-Chief, it remains open to the Sovereign to give directions as to any complaints which may be brought before him by the Secretary of State.

A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1) (2).

Mode of complaint by soldier.

43. If any soldier thinks himself wronged in any matter by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed, or in respect of any other matter, he may complain thereof to the prescribed general officer, or, in the case of a soldier serving in India, to such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps

Part I. ss. 43–44.

as may be necessary for giving full redress to the complainant in respect of the matter complained of.

NOTE.

The mode of preferring a complaint is set forth in the form in the soldier's personal account book. Complaints may be made respecting any matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matters by which they think themselves wronged. A complaint cannot be legitimately preferred to a superior officer except in the regular course defined by this section,—that is to say, first to the captain and then to the commanding officer. It is only where the captain refuses or unnecessarily delays to redress or forward the complaint that a direct application can be made to the commanding officer; and it is only if the commanding officer similarly refuses or delays, that a direct application can be made to the proper general officer. The captain, in the one case, and the commanding officer in the other, ought to be informed of the application being made to his superior.

Prescribed General Officer: see Rule 126 (E).

The commanding officer to whom the complaint is made will usually be the commanding officer as defined in Rule 129; but if the complaint is made to any other officer, that officer should receive it and should at once forward it to the commanding officer of the complaining soldier as defined by that Rule, and the complaint will then be dealt with as properly made.

The only exception to the above rule as to the course of complaints is on occasion of the question which general officers at their yearly inspections are required to put to regiments, as to whether there are any complaints. See K.R., para. 127.

A soldier cannot in any way be punished for making a complaint under this section, whether it be frivolous or not, and he ought not, for making a complaint, to be treated in any way with harshness or suspicion.

A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1) (2).

It has been held that as between persons both subject to military law the mode of redress given by this section is the only one open. Civil courts cannot be invoked to redress grievances between persons subject to military law: see *Dawkins* v. *Lord Paulet*, L.R. 5 Q.B. at p. 121; *Marks* v. *Frogley* [1898] 1 Q.B. at pp. 899, 909.

Punishments.

Scale of punishments by courts-martial.

44. Punishments may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers, according to the scale following:

a. Death.

b. Penal servitude for a term not less than three years.

c. Imprisonment, with or without hard labour, for a term not exceeding two years.

d. Cashiering.

e. Dismissal from His Majesty's service.

f. Forfeiture, in the prescribed manner, of seniority of rank either in the army or in the corps to which the offender belongs, or in both.

g. Reprimand, or severe reprimand.

In the case of soldiers, according to the scale following:

h. Death.

j. Penal servitude for a term not less than three years.

k. Imprisonment, with or without hard labour, for a term not exceeding two years.

kk. Detention for a term not exceeding two years.

l. Discharge with ignominy from His Majesty's service.

m. In the case of a non-commissioned officer, forfeiture, in the prescribed manner, of seniority of rank, or reduction to a lower grade, or to the ranks.

n. Forfeitures, fines, and stoppages.

Provided that—

(1.) Where in respect of any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scales than the particular punishment.

(1A.) For the purposes of commutation and revision of punishment, detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(2.) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment.

(3.) An officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand.

(4.) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from His Majesty's service.

(5.) Where a soldier on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence such field punishment, other than flogging, as may be directed by rules to be made from time to time by a Secretary of State, and such field punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb.

(6.) In addition to or without any other punishment in respect of an offence committed by a soldier on active service, it shall be lawful for a court-martial to order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding three months.

Part I.

s. 44.

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(9.) All rules with respect to field punishment made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

(10.) For the purpose of commutation of punishment the field punishment above mentioned shall be deemed to stand in the scale of punishments next below detention.

(11.) In addition to, or without, any other punishment in respect of any offence, an offender convicted by court-martial may be subjected to forfeiture of any deferred pay, service towards pension, military decoration or military reward, in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1893, or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts.

56 & 57 Vict. c. 5.

(12.) In addition to, or without, any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorised by this Act to be made from his ordinary pay.

(13.) No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict, or cause to be inflicted, on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorised by this Act.

NOTE.

As to the principle of affixing to each offence a maximum punishment, instead of, as formerly, "such punishment as a general or other court-martial may award," see Ch. III, para. 35.

b. Penal Servitude. See as to the execution of a sentence of penal servitude, sections 58–62, and sections 68, 131, and notes.

c. Imprisonment. As to rules for awarding terms of imprisonment in days, months, or years, as the case may require, see K.R., para. 585. As to execution of a sentence, see ss. 63–67, 131–135, and notes; and as to duration of sentence, see s. 68.

An offender sentenced to imprisonment without hard labour is, in England, obliged by prison rules to do some labour, unless directed to be imprisoned as an offender of the first division, in which case he is allowed to receive visits and has other privileges. Persons directed to be treated as offenders of the second division can only be employed at work of an industrial or manufacturing nature and have other privileges.

An offender does not cease to be subject to the Act while undergoing a

sentence of penal servitude, imprisonment, or detention, though he has been discharged or dismissed from the service. S. 158 (2).

f. Forfeiture . . of seniority of rank. See Rule 47.

g. Reprimand or severe reprimand. Reprimands vary from a public and severe reprimand to a private reprimand. A public reprimand may be administered at the head of a battalion, regiment, brigade, or division, paraded for the purpose; or it may be conveyed in general orders. A private reprimand is usually given by the commanding officer of a battalion, regiment, or brigade, at his quarters, in the presence of the officers of the regiment, or of the officers of equal and superior rank only, or simply in the presence of a staff officer. The manner and time of delivering the reprimand is appointed by the confirming authority.

For the additional punishment of deduction from pay, see proviso (12) and section 137.

k. Imprisonment. The introduction of the new punishment of detention will have the effect of limiting very much the cases in which a soldier will be sentenced to imprisonment. A soldier convicted by court-martial of an offence under ss. 17, 18 (4), 18 (5), or 41, whom it is not desired to retain in the Army, should, as heretofore, be sentenced to imprisonment, but in case he is convicted of any other offence (*i.e.*, a military offence), and it is desired to retain him in the Army, he should be sentenced to detention; if, however, on account of previous bad character, or for any other reason it is considered undesirable that he should rejoin the colours after serving his sentence, the court will still have power to sentence him to imprisonment.

kk. Detention. See ch. III, para. 36, and ch. V, para. 103.

As to rules for awarding terms of detention inflicted by a commanding officer, see Notes to Rule 6.

A soldier sentenced to three months' detention, or upwards, is liable in commutation thereof, either wholly or partly, to general service and to transfer to any corps. Section 83 (7).

m. Forfeiture. Service in the lower grade or loss of seniority will reckon from the date of signing the original sentence, whether the original sentence was forfeiture of seniority or reduction, or whether the punishment in question was a revised sentence, or a mitigation by the confirming officer from a more severe sentence. As to the reduction of warrant officers, see s. 182 (2) (3), and of warrant officers in the Indian forces, s. 180 (2) (*f*).

Forfeiture in the prescribed manner. See Rule 47. The power to forfeit seniority of rank in case of non-commissioned officers was introduced by the Army (Annual) Act, 1906.

n. Forfeitures, i.e., forfeitures of service towards discharge, see sections 79 (2), 84, 161 (which, however, are consequential and cannot be awarded by sentence of court-martial), and the forfeitures mentioned in provisos (6), (11), and (12) of this section, which include forfeiture of good conduct badges and medals with the pay or money attached thereto, and can usually be awarded by court-martial, but under the Pay Warrant, 1907, arts. 1022 and 1160, cannot be awarded by a regimental court-martial. They may be more severe in effect than a short term of imprisonment or detention.

As to restoration of forfeited service, see the provisos to s. 79 (2) and s. 161.

Fines. These are not authorised to be imposed for any offence except drunkenness, and cannot exceed, if imposed by a court-martial, one pound, or if imposed by a commanding officer, ten shillings: ss. 19, 46 (2) (*b*).

Stoppages. See proviso (12). Section 138 sets out the cases in which

Part I. ss. 44–45.

penal deductions or stoppages may be made from the ordinary pay of the soldier; and section 139 provides for their remission.

Provisos.

(1.) *Any one punishment.* Provisos (2), (3), (4), (6), (11), and (12) specify the particular instances in which more than one punishment may be given.

(2.) Care must be taken to comply with this provision; a sentence to penal servitude *and* to be cashiered is incorrect.

(4.) It will be observed that this does not apply in case of a soldier sentenced to detention.

(5.) For definition of active service, see section 189.

Death, or penal servitude, or imprisonment, or detention, but no other punishment, can be commuted into field punishment.

The following conditions are essential to the legality of field punishments:—

(1.) The offender must be on active service.

(2.) The punishment must be in conformity with the Rules made by the Secretary of State; see the Rules at p. 598.

(6) Forfeiture of pay under this provision can only be ordered in case of an offence committed by a soldier on active service. If the soldier is at the time liable to any penal deductions from pay, the order only affects the balance of the pay remaining after those deductions: see section 138, Proviso (c).

(11.) As to these forfeitures, see Pay Warrant, 1907, arts. 1021–1026, 1043, 1044, 1052, 1064, 1158–1162.

(12.) As to these deductions see section 137 (officer) and section 138 (soldier.)

Arrest and Trial.

Arrest.

Custody of persons charged with offences.

45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act:

(1.) Every person subject to military law when so charged may be taken into military custody: Provided, that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his commanding officer in manner prescribed; and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody:

(2.) Military custody means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement:

(3.) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody an officer (though he be of higher rank) engaged in a quarrel, fray,

or disorder; and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm, or branch of the service:

(4.) An officer or non-commissioned officer commanding a guard, or a provost-marshal or assistant provost-marshal, shall not refuse to receive or keep any person who is committed to his custody by any officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody, to deliver at the time of such committal, or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal into whose custody the person is committed, an account in writing, signed by himself, of the offence with which the person so committed is charged:

(5.) The charge made against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

NOTE.

It will be convenient to give a summary of the provisions for preventing a person from being kept in custody without his case being dealt with by the proper authority.

An officer or non-commissioned officer who commits a person into custody should sign and deliver to the officer or non-commissioned officer into whose custody such person is committed, a written account (termed "the charge") of the offence with which the person so committed is charged. He should if possible, do this at the time of committal, but at any rate must do so within 24 hours after that time. See ss. 21 (2), 45 (4). If the "charge" is not delivered at the time of committal, a verbal report to the same effect is to be made (K.R., para. 463), but non-delivery of the "charge" will not excuse a refusal to receive an offender into custody. The officer or non-commissioned officer into whose custody the accused is committed, must report in writing the name and offence of the accused, as far as known to him, and the name and rank of the person by whom he is charged (s. 21 (3)). This report must be made as soon as he is relieved from his guard or duty, if relieved within 24 hours after the committal, and in any case within those 24 hours. It must be accompanied by the "charge," if he has received it; and should be made by an entry in the guard report, and he should send the "charge," or a copy thereof, to the commanding officer of the accused (K.R., para. 463). If he has not received the "charge," he must mention the circumstance in his report, and if the "charge" is not delivered within the 24 hours, the commander of the guard must make a further report to the superior authority, who, if evidence sufficient to justify the retention in custody of the accused is not forthcoming, will, at the expiration of 48 hours from the time of committal, order him to be released (K.R.,

Part I. s. 45–46.

para. 463). A commanding officer who has received the report of the committal of an accused person becomes responsible (s. 45 (5)) for having the case investigated without delay. This delay, under Rule 2, is not to exceed 48 hours without the case being reported to the officer to whom application would be made to convene a court-martial for the trial of the person charged.

If eight days elapse without the case being disposed of summarily and without a court-martial being ordered to assemble, the special report required by section 45 (1), as explained by Rule 1, must be made, and a similar report is required to be forwarded every eight days; and this report will have to be sent by the commanding officer, even though the fault of the delay lies with the officer to whom the report is to be made. This special report is not required on active service. If unnecessary delay occurs in convening a general or district court-martial, a report has to be made to the Army Council. (Rule 17 (C)).

When an officer is placed in arrest by his commanding officer, the commanding officer should immediately report the case to superior authority.

With reference to the above observations, it must be recollected that in reckoning the time fixed by the Rules, Sunday, Good Friday, and Christmas Day are, as a general rule, excluded (Rule 135 (A)), but this is not the case in reckoning the days fixed by sections of the Act, *e.g.*, ss. 21, 45 (1).

Paragraph (1). See generally as to Arrest and Confinement Ch. IV, paras. 1–17; and K.R., paras. 463–482.

Special Report. See Rule 1.

Paragraph (2). *Military custody.* This expression is here restricted by the opening words of the section to the military custody of persons when charged with offences, and does not apply to persons in military custody undergoing sentence. See K.R., paras. 465, 473. Military custody includes, in the case of volunteers, the custody of a volunteer ordered into arrest under s. 21 of the Volunteer Act, 1863. (See *Marks* v. *Frogley*, L.R. [1898] 1 Q.B. at p. 898.)

Paragraph (5). *Investigated.* All charges against non-commissioned officers and soldiers must now be investigated in the first instance by the company, &c., commander, who, in all cases where a private soldier is concerned, and in certain cases where a non-commissioned officer is concerned, may either dispose of the case himself or reserve it for the commanding officer (see K.R., paras. 484, 499); and, where the case is so reserved, the commanding officer must give the decision under s. 46 (1).

The commanding officer in this section means the commanding officer as defined by Rule 129; see K.R., para. 456.

As to the conduct of the investigation, see Ch. IV, paras. 18–30. Rules 2–8, and notes. K.R., paras. 483–492.

Power of Commanding Officer.

Power of commanding officer.

46. (1.) The commanding officer shall, upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge if he in his discretion thinks that it ought not to be proceeded with; but where he thinks the charge ought to be proceeded with he may take steps for bringing the offender to a court-martial, or, in the case of a soldier, may deal with the case summarily.

(2.) Where he deals with a case summarily, he may,—

(*a.*) Award to the offender detention for any period not exceeding fourteen days; and

(*b.*) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding ten shillings, either in addition to or without detention ; and

(*c.*) In addition to or without any other punishment may order the offender to suffer any deduction from his ordinary pay authorised by this Act to be made by the commanding officer ; and

(*d*) In the case of an offence by a soldier (not being a non-commissioned officer) on active service, may award to the offender field punishment within the meaning of section forty-four of this Act for any period not exceeding twenty-eight days, and may in addition to or without any other punishment order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding twenty-eight days.

(3.) Where the charge is against a soldier for drunkenness the commanding officer shall deal with the case summarily, unless the offence was committed on active service or on duty, or after the offender was warned for duty, or unless by reason of the drunkenness the offender was found unfit for duty, or unless the soldier has been guilty of drunkenness on not less than four occasions in the preceding twelve months, but nothing in this sub-section shall affect the jurisdiction of any court-martial, or the right of the soldier to be tried by a district court-martial.

(4.) In the case of absence without leave, the commanding officer may award detention for any period not exceeding twenty-one days.

(5.) Provided that where detention is awarded for absence without leave, the commanding officer shall have regard to the number of days during which the offender has been absent, and in no case shall the term of detention awarded, if exceeding seven days, exceed the term of absence.

(6.) Provided that in every case where the commanding officer has power to deal with the case summarily, the accused person may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(7.) An offender shall not be liable to be tried by court-martial for any offence which has been dealt with summarily by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by court-martial.

(8.) Where a commanding officer has power to deal with a case summarily under this section, and, after hearing the evidence, considers that he may so deal with the case, he shall, in every case where the award or finding involves a forfeiture of pay, and in every other case unless he awards one of the minor punishments referred to in

Part I. s. 46.

this section, ask the soldier charged whether he desires to be dealt with summarily or to be tried by a district court-martial, and, if the soldier elects to be tried by a district court-martial, the commanding officer shall take steps for bringing him to trial by a district court-martial, but otherwise shall proceed to deal with the case summarily.

(9.) Nothing in this section shall prejudice the power of a commanding officer to award such minor punishments as he is for the time being authorised to award, so, however, that a minor punishment shall not be awarded for any offence for which detention exceeding seven days is awarded.

NOTE.

See Ch. IV, paras. 31–38; Rules 2–7, and notes. As to meaning of *Commanding Officer*, see Rule 129 and note; K.R., para. 456.

The discretion of a commanding officer in acting under this section is regulated by K.R., paras. 487–492, and an officer not under the rank of brigadier-general may, within two years of the award, order him, where the offender has not completed the sentence, to cancel or mitigate the award, or if the sentence has been completed, to alter the record of the punishment awarded: K.R., para. 507; after the lapse of two years, any such action, if necessary, must be taken by the Army Council.

Sub-section (1). *In the case of a soldier.* "Soldier" includes non-commissioned officer, and "non-commissioned officer" includes acting non-commissioned officer, whether in receipt of pay as such or not, s. 190 (5), (6). But the obligation on a commanding officer to deal summarily with a soldier charged with drunkenness does not apply to a non-commissioned officer, s. 183 (1); and K.R., para. 499, forbid non-commissioned officers (including acting non-commissioned officers) to be subjected to summary punishment, but a non-commissioned officer may be admonished or reprimanded, and an acting non-commissioned officer may be ordered to revert to his permanent rank.

The power of a commanding officer under this section to deal summarily with a soldier does not extend to a warrant officer (see s. 182 (1)), nor to a person subject to military law who does not belong to His Majesty's forces, s. 184 (2).

Sub-section (2). *Detention.* The detention awarded by a commanding officer up to seven days will be awarded in hours (Rule 6, and note), and will as a rule be undergone in a branch detention barrack. For form of commitment, see Rules, App. III. Form G, p. 591 below, and as to detention barracks generally, K.R., paras. 646–660. As to commencement of term of detention, see Rule 6.

It must be observed that, as a result of the amendments introduced into this section by the Army (Annual) Act, 1906, a commanding officer can no longer inflict a sentence of imprisonment; he can only award detention, and a sentence of imprisonment if inflicted by him would be illegal.

(*b*) For scale of fines for drunkenness, mode of recovery, &c., see K.R., paras. 512, 513, and as to punishment for simple drunkenness, para. 497.

(*c*) *Deduction from ordinary pay.* See ss. 138, 139, and definition of "day" in s. 140, and note to those sections.

(*d*) This provision was introduced by the Army (Annual) Act, 1907. See Notes to section 44 (5), (6). The commanding officer in awarding field

punishment, or forfeiture of pay, cannot impose either punishment for more than 28 days.

Sub-section (3). Certain cases of drunkenness a commanding officer *must* deal with summarily, but he *may*, if he thinks fit, deal summarily with any case of drunkenness, though the offence was committed under the special circumstances mentioned in this sub-section. See above note to sub-section (1). See also K.R., para. 509.

Sub-section (4). *Absence.* See Ch. IV, para. 33, note to s. 138, and K.R. 495.

Sub-section (6). Formerly this sub-section only applied in cases of a charge for absence without leave exceeding seven days; but now it applies to all cases with which the commanding officer has power to deal summarily.

Sub-section (7). *Dealt with summarily.* If a commanding officer, contrary to the K.R., para. 487, which requires him to refer to superior authority certain offences, but, through inadvertence and with a full knowledge of the facts, deals with any offence summarily, the offender cannot be tried by court-martial for that offence.

Acquitted or convicted by a civil court or a court-martial. See note to s. 157. Nor can a man acquitted or convicted of an offence by a civil court or court-martial be tried by court-martial for the same offence; ss. 157, 162 (6). Where a soldier has been acquitted or convicted or summarily punished for an offence which is substantially the same as some other offence, he ought not to be summarily punished by his commanding officer or tried for such other offence. If, *e.g.*, he has been acquitted, or convicted of, or summarily punished for, absence without leave, and the absence amounted to desertion, he cannot be afterwards tried for desertion. Nor can a man convicted by a court-martial of an offence be afterwards sentenced by his commanding officer to stoppages for damage caused by that offence.

Sub-section (8). *By a district court-martial.* Formerly a soldier ordered by his commanding officer to suffer imprisonment, or to pay a fine, or to suffer any deduction from his ordinary pay, could claim the right of being tried by a district court-martial instead of submitting to the award. This provision was repealed by the Army (Annual) Act of 1893. Under the provision which was substituted by that Act for the repealed provision, and which, as amended by the Army (Annual) Act of 1904, is contained in this sub-section, a commanding officer, where he considers that he may deal with a case summarily, must in every case in which his sentence involves a forfeiture of pay, and in every other case in which he does not award a minor punishment, even although the sentence does not involve forfeiture of pay, give the soldier the option of being dealt with summarily or of being tried by a district court-martial. In other words, the soldier can now make his choice in the first instance between the tribunal of his commanding officer and a district court-martial, instead of having a sort of appeal from the judgment of his commanding officer to a district court. If the commanding officer omits to ask the soldier the question prescribed by this sub-section, the soldier can claim his right of trial by court-martial at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence: Rule 7; and a soldier is to be given on the following day an opportunity of reconsidering his decision to be tried by court-martial: K.R., para. 496.

The amendment as to sentences involving forfeiture of pay, introduced by the Army (Annual) Act, 1904, gives the soldier a statutory right to make a claim which he has hitherto been allowed by custom to make.

A non-commissioned officer or soldier remanded by his commanding officer

Part I. ss. 46–47.

to a regimental court-martial, cannot legally claim a district court-martial under this section, but a commanding officer should use his discretion in dealing with such a request.

Sub-section (9). *Minor punishment.* This prevents the award of a minor punishment in addition to detention in the case of any offence for which more than seven days' detention has been awarded. See K.R., paras. 493–501. Non-commissioned officers may be reprimanded, but not subjected to minor punishments: K.R., para. 499.

Rule 6 (B) prohibits a commanding officer from increasing a punishment after he has once made his award, which is complete when the man has quitted his presence. This rule applies in the case of minor as well as of other punishments. But a commanding officer can at any time before the punishment has been completed mitigate or remit a minor or a summary punishment. As to entry of his award or decision see K.R., paras. 485, 507.

Courts-Martial.

Regimental courts-martial.

47. (1.) Any officer authorised by or in pursuance of this Act to convene general and district courts-martial or either of them, also any commanding officer of a rank not below the rank of captain, also any officer of a rank not below the rank of captain when in command of two or more corps or portions of two or more corps, also on board a ship a commanding officer of any rank may, without warrant and by virtue of this Act, convene a regimental court-martial for the trial of offences committed by soldiers under his command.

(2.) Such court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than one whole year.

(3.) The convening officer shall appoint the president.

(4.) The president of a regimental court-martial shall not be under the rank of captain, unless where the court-martial is held on the line of march, or on board any ship, or unless, in the opinion of the convening officer (such opinion to be expressed in the order convening the court and to be conclusive), a captain is not, with due regard to the public service, available, in any of which cases an officer of any rank may be president.

(5.) A regimental court-martial shall not try an officer, nor award the punishment of death, penal servitude, or imprisonment, or of detention in excess of forty-two days, or of discharge with ignominy; but, subject as aforesaid, and save as in this Act specially mentioned, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by a regimental court-martial.

Note.

The principal enactments which govern the convening, composition, and procedure of courts-martial are contained in this group of sections (ss.

47–56). The remainder of the law will be found in the supplemental provisions of the Act as to courts-martial (ss. 122–130) and as to evidence (ss. 163–165) and in the Rules of Procedure made under s. 70. Section 49 provides for the convening of the exceptional tribunal of a field general court-martial to try offences committed on active service, and offences against the inhabitants of, or residents in, countries beyond the seas, which it is not practicable to try by an ordinary court. Certain questions relating to jurisdiction of courts-martial are dealt with in ss. 157–162.

See ch. V for general explanation of the constitution and practice of courts-martial; and for details see the Rules of Procedure and notes. The King's Regulations, para. 487, specify the offences which a commanding officer is empowered, without reference to superior authority, to refer to trial by regimental court-martial; and point out (paras. 547, 552) the general rules under which different classes of offences should be dealt with by a lower or higher tribunal. As commanding officers can now (subject to the special limitation in subs. (5) of s. 46) award fourteen days' detention for any description of offence the assembly of regimental courts-martial will be infrequent.

Sub-section (1). *Commanding officer.* This does not mean any officer having command, but the commanding officer, as defined by Rule 129; see K.R., para. 456. An officer, therefore, will not have power to convene a regimental court-martial, unless he either (*a*) holds a warrant to convene a general or district court-martial; or (*b*) being of the rank of captain or higher rank, is in command of detachments of two or more corps; or (*c*) being of the rank of captain or higher rank, is the commanding officer as defined by Rule 129, *i.e.*, the officer whose duty it is to tell off the accused; or (*d*) is the commanding officer of soldiers on board a ship.

By soldiers under his command. A camp follower or other person subject to military law as a soldier, but who does not belong to His Majesty's forces, cannot be tried by a regimental court-martial, s. 184. As to speedy convening of a regimental court, see Rule 16.

Ship. This section will apply to a military court-martial for trying a non-commissioned officer, if otherwise allowed to be held on board a ship commissioned by His Majesty. See Order in Council, para. 7 below, p. 606.

Sub-section (2). *A commission.* Consequently, an officer who had held a militia commission for eleven months, would be qualified to sit at the end of one month after he has obtained his army commission.

Sub-section (3). The convening officer cannot preside himself, or, indeed, be a member of the court: section 50 (2). The president must be appointed by name.

Sub-section (4). As to the duty of the president, see Rule 59. As to the confirmation of the sentence of a regimental court-martial, see s. 54 (1) (*a*).

Sub-section (5). *Officer.* This expression includes warrant and other officers holding honorary commissions (s. 190 (4)), and persons subject to military law as officers (s. 175). It must also be recollected that a warrant officer not holding an honorary commission cannot be tried by a regimental court-martial: s. 182 (1). Moreover, by K.R., para. 438, it is laid down that as a rule a non-commissioned officer above the rank of corporal is not to be tried by such court.

Officers of any corps may sit on a regimental court-martial (s. 50 (1)), and the offender may be tried although no officer of the court belongs to the corps of the offender. But see Rule 20 (B) as to the trial of an offender not belonging to the regular forces. A qualified officer willing to sit may sit, although not under the orders of the convening officer: *e.g.*, the commanding officer of a detached part of a corps may convene a regimental

Part I. ss. 47–48.

court-martial composed of officers of other corps, if they are willing to serve. It has, however, been already indicated that a commanding officer will usually apply for a district court-martial, if he does not deal summarily with an offence.

It must be observed that, under the amendments introduced into this subsection by the Army (Annual) Act, 1906, the maximum sentence which a regimental court-martial can inflict is 42 days' detention, and that any sentence of imprisonment would be illegal.

General and district courts-martial.

48. The following rules are enacted with respect to general courts-martial and district courts-martial :

(1.) A general court-martial shall be convened by His Majesty, or some officer deriving authority to convene a general court-martial immediately or mediately from His Majesty :

(2.) A district court-martial shall be convened by an officer authorised to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorised to convene general courts-martial :

(3.) A general court-martial shall consist, in the United Kingdom, India, Malta, and Gibraltar, of not less than nine, and elsewhere of not less than five, officers, each of whom must have held a commission during not less than three whole years, and of whom not less than five must be of a rank not below that of captain :

(4.) A district court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than two whole years :

(5.) The minimum number mentioned in this section for a general or district court-martial shall be the legal minimum for that court-martial :

(6.) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude ; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by either a general or district court-martial :

(7.) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer :

(8.) Sentence of death shall not be passed on any prisoner without the concurrence of two-thirds at the least of the officers serving on the court-martial by which he is tried :

(9.) The president of a court-martial, whether general or district, shall be appointed by order of the authority convening the court; but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening

the court, and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial; and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a captain is not, having due regard to the public service, available.

NOTE.

With respect to warrants authorising the convening of general courts-martial, see s. 122 : and Ch. V, paras. 20–22.

The power to convene district courts-martial is not given specifically by warrant, but is an incident of the power to convene general courts-martial : in other words, an officer authorised to convene general courts-martial may either himself convene, or delegate to other officers power to convene, district courts-martial (s. 123). As to the duty of an officer before convening a court, and as to speedy convening of court, see Rule 17.

A convening officer can increase beyond the legal minimum the number of members to sit on a court-martial, but cannot decrease the number below that minimum; he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void.

As to the eligibility of officers, and the disqualification by interest of officers, to serve on courts-martial, see s. 50 and Rule 19.

Officers of any corps may serve, but the court must not (save in certain exceptional cases) be composed exclusively of officers of the same regiment or battalion. Rule 20 (A).

As to trial of a member of the militia, yeomanry, or volunteers, see Rule 20 (B).

As to the rank of the members of a general court-martial, see paragraphs (3) and (7), and Rule 21. If any officer whose standing or rank is less than that required by this section is a member of the court, the proceedings will be invalid.

Paragraph (6). In the case of a warrant officer not holding an honorary commission, a district court-martial can only award the punishments specified in paragraph 2 (*a*) of s. 182.

Paragraph (9). The president must be appointed by name, and directly by the convening officer. The duties of the president are laid down in Rule 59.

Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the commanding officer of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused. K.R., para. 578.

Field general courts-martial.

49. (1.) Where a complaint is made to any officer in command of any detachment or portion of troops in any country beyond the seas, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that an offence has been committed by any person subject to military law,

Then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorised to convene general

Part I. s. 49.

courts-martial, to convene a court-martial, in this Act referred to as a field general court-martial, for the trial of the person charged with such offence, provided as follows:

(*a.*) An officer in command of a detachment or portion of troops not on active service shall not convene a field general court-martial for the trial of any person unless that person is under his command, nor unless the offence with which the person is charged is an offence against the property or person of an inhabitant of, or resident in, the country in which the offence is alleged to have been committed;

(*b.*) A field general court-martial shall consist of not less than three officers; unless the officer convening the same is of opinion that three officers are not available, having due regard to the public service, in which case the court-martial may consist of two officers;

(*c.*) The convening officer may preside, but he shall, whenever he deems it practicable, appoint another officer as president, who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain;

(*d.*) Where a field general court-martial consists of less than three officers, the sentence shall not exceed such field punishment as is allowed by this Act, or imprisonment.

(2.) Section forty-eight of this Act shall not apply to a field general court-martial, but sentence of death shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.

(3.) A field general court-martial may, notwithstanding the restrictions enacted by this Act in respect of the trial by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence: Provided always, that no sentence of any such court-martial shall be executed until confirmed as provided by this Act.

NOTE.

The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the service, to try such offences by an ordinary general court-martial. A field general court-martial can try any offence committed on active service, but where troops are not on active service it can only be convened for the trial of offences against the property or person of some inhabitant of, or resident in, the country. See Rules 105–123 and notes.

Sub-section (3). *Restrictions enacted by this Act.* See s. 41 (*a*).

As to confirmation of sentence, s. 54 (1) (*d*).

Courts-martial in general.

50. (1.) The officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps.

(2.) The officer who convened a court-martial shall not, save as is otherwise expressly provided by this Act, sit on that court-martial.

(3.) Any of the following persons, that is to say—A prosecutor or witness for the prosecution of any accused, or the commanding officer of the accused within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges on which an accused is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such accused, nor shall he act as judge advocate at such court-martial.

NOTE.

Sub-section (1). If an officer is competent to sit on a court-martial, he is *qualified* to sit on any court of the same description, irrespective of his *obligation* to sit. A convening officer may, therefore, by arrangement, avail himself of the services of an officer not under his orders. A general or district court must, as far as seems to the convening officer practicable, be composed of officers of different corps, Rule 20 (A); and see as to the trial of a member of the militia, yeomanry, or volunteers, Rule 20 (B). See note to s. 47 (5). The definition of corps in s. 190 (15) includes the Royal Marines.

Sub-section (2). *Save as otherwise provided.* See s. 49 (1), (*c*), which enables the convening officer of a field general court-martial to preside, if it is impracticable to appoint another officer.

Sub-section (3). A member of the court or a judge advocate is a competent witness for the defence, but not for the prosecution. In the case of a field general court-martial, an officer is disqualified by Rule 106 (D) for serving, if he is provost-marshal, assistant provost-marshal, or prosecutor, or a witness for the prosecution.

Within the meaning, &c., i.e., of s. 46 and Rule 129.

Investigated the charges. The officer who investigated is usually the commanding officer of the accused; when he is not, he is equally excluded by these words. He has been defined as meaning the officer who, in a judicial capacity, sifted the evidence in such a way as to acquaint him with, and lead him to form a conclusion upon, the merits of the case, and does not include an officer through whose hands the charges passed merely formally or ministerially. Rule 19 (B) iii, however, now adds to the list of disqualified officers the officer who took down the summary of evidence, the company, &c., commander who conducted the preliminary inquiry, and any member of a court of inquiry which may have dealt with the case.

Challenges by accused.

51. (1.) An accused about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president, whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the accused makes no reasonable objection.

(2.) Every objection made by an accused to any officer shall be submitted to the other officers appointed to form the court.

Part I.
ss. 51–52.

(3.) If the objection is to the president, such objection, if allowed by one-third or more of the other officers appointed to form the court, shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4.) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the accused to object.

(5.) If the objection is to a member other than the president, and is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(6.) In order to enable an accused to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the accused on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

NOTE.

It will be observed that this section gives the accused an absolute right to a new president, if the challenge of the president by the accused is allowed by one-third of the officers appointed to form the court. A challenge of the president must be dealt with first.

As to challenges generally, see Rule 25 and note; as to adjourning for the purpose of appointing fresh members, and the power to convene another court, Rule 18; and as to challenges where a court is being sworn to try several persons, Rule 71 (A) (B). In the case of a field general court-martial, an objection to any officer will be allowed, if any member of the court thinks the objection reasonable, Rule 110 (B).

Administration of oaths.

52. (1.) An oath shall be administered by the prescribed person to every member of every court-martial before the commencement of the trial in the following form; that is to say,

"You do swear, that you will well and truly "try the accused [*or* accused persons] before the court according to "the evidence, and that you will duly administer justice according "to the Army Act now in force, without partiality, favour, or "affection, and you do further swear that you will not divulge the "sentence of the court until it is duly confirmed, and you do further "swear that you will not on any account at any time whatsoever "disclose or discover the vote or opinion of any particular member "of this court-martial, unless thereunto required in due course of "law. So help you GOD."

(2.) An oath in the prescribed form or forms shall be administered by the prescribed person to the judge advocate or person officiating as judge advocate (if any), and also to every officer in attendance

on a court-martial for the purpose of instruction (if any), and also to every shorthand writer (if any), in attendance on the court-martial.

(3.) Every witness before a court-martial shall be examined on oath, which the president or other prescribed person shall administer in the prescribed form.

(4.) If a person by this Act required either as a member of, or person in attendance on, or witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court, if satisfied of the sincerity of the objection or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn to make a solemn declaration in the prescribed form, and for the purposes of this Act such solemn declaration shall be deemed to be an oath.

NOTE.

Sub-section (1). *By the prescribed person.* This person is prescribed by Rule 26. The oath taken by members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess), and in their capacity of judges to duly administer justice; as well as to keep secret the votes of members, and (until confirmed) the sentence of the court.

The oath taken by members of the court implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole, and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath, "unless thereunto required in due course of law," only applies to such cases as those where members of the court are charged individually with partiality or bribery, and thus in a court of justice it would, or might, be necessary to make disclosures regarding individual votes to the court trying members so charged.

Rule 111 (A) provides for the mode of swearing the court in the case of a field general court-martial.

Sub-section (2). The forms of oaths for the judge advocate, for an officer attending for instruction, for a shorthand writer and an interpreter, and the person to administer them, are prescribed by Rule 27; and for an interpreter at a field general court-martial by Rule 111 (B).

Sub-section (3). The form of oath for a witness, and the person to administer it, are prescribed by Rule 82, and in the case of a field general court-martial by Rule 114.

Sub-section (4). The form of solemn declaration is prescribed by Rule 28. As to swearing a person according to his own religion, see Rule 30; and in the case of a field general court-martial, Rule 115.

The practice followed in the law courts of any colony or foreign country as to the mode of swearing or taking the affirmation of natives should usually be adopted.

For punishment of perjury committed by a witness subject to military law, see s. 29; by a civilian, see s. 126 (2).

Part I.
s. 53.
Procedure.

53. (1.) If a court-martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

(2.) If after the commencement of the trial the president dies or is otherwise unable to attend, and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank the court shall be dissolved.

(3.) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(4.) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried again.

(5.) The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared of all other persons.

(6.) The court may adjourn from time to time.

(7.) The court may also, where necessary, view any place.

(8.) In the case of an equality of votes on the finding the accused shall be deemed to be acquitted. In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote.

(9.) When a court-martial recommends a person under sentence to mercy, such recommendation shall be attached to and form part of the proceedings of the court, and shall be promulgated and communicated to the person under sentence, together with the finding and the sentence.

NOTE.

Sub-section (1). In the event of the dissolution of the court before a finding of acquittal, or a finding of guilty and sentence thereon, the accused may be tried again: sub-section (4), Rule 66 (B); but it may frequently be inexpedient to convene a fresh court for such trial, especially where the accused has been for some time under arrest or in confinement.

Sub-section (2). *Is unable to attend.* The court cannot proceed at all without a president, and in the event of his absence must adjourn till he can attend, or till his place is supplied by the convening authority: see Rule 65 (B).

Sub-section (3). *Illness of the accused.* A medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

Impossible to continue. This means to continue within a reasonable time having regard to all the circumstances.

Sub-section (5). *Cause the court to be cleared.* If more convenient the court may withdraw for deliberation: see Rule 63.

Sub-section (6). *Adjourn.* See as to adjournment, Rule 65.

Sub-section (7). *View.* The convening officer cannot depute so many members as he might think fit, to view a place, as the view must be in open

court (Rule 63 (B)), *i.e.*, in the presence of all the members, the prosecutor, and the accused.

Sub-section (8). *Acquitted.* In such a case the acquittal, if it relates to all the charges, must be at once pronounced in open court, and the accused must be discharged. Section 54 (3).

Sub-section (9). As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with, and as part of, the finding.

Where, in a recommendation to mercy, a court expressed an opinion inconsistent with the guilt of the person under sentence, for instance, where the charge was for striking a superior, and the court stated their opinion that the accused "did not intend to strike," it was held that it must be treated as an acquittal, the intent being an element of the offence.

As to the exceptional character of recommendations to mercy see ch. V, para. 88.

Confirmation, revision, and approval of sentences.

54. (1.) The following authorities shall have power to confirm the findings and sentences of court-martial; that is to say,

(*a.*) In the case of a regimental court-martial, the convening officer or officer having authority to convene such a court-martial at the date of the submission of the finding and sentence thereof:

(*b.*) In the case of a general court-martial, His Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from His Majesty:

(*c.*) In the case of a district court-martial, an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorised to convene general courts-martial:

(*d.*) In the case of a field general court-martial, an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part, or where the offence was committed on active service, any such officer as may under the rules made in pursuance of this Act be authorised to confirm the findings and sentences of the field general court-martial awarding the sentence: Provided that a sentence of death or penal servitude awarded by a field general court-martial shall not be carried into effect unless or until it has been confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of his sentence.

(2.) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision once, but not more than once, and it shall not be lawful for the court on any revision to receive any

Part I. s. 54.

additional evidence; and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also. In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded.

(3.) The finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation or be subject to be revised, and if it relates to the whole of the offences shall be pronounced at once in open court, and the accused shall be discharged.

(4.) A member of a court-martial shall not have authority to confirm the finding or sentence of that court-martial, and where a member of a court-martial becomes confirming officer he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority; and where a court-martial is held in a colony, and there is no such superior authority in that colony, the governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such superior authority as above mentioned. Provided that where a member of a field general court-martial trying an accused would but for his being a member of the court have power to confirm the finding and sentence of the court, and is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(5.) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation wholly or partly, and refer such finding and sentence, or the part not confirmed, to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purpose of this Act be deemed to be in that instance and to the extent of such reference the confirming authority.

(6.) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed by an authority authorised to confirm the same.

(7.) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service, be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the governor of the colony.

(8.) Sentence of death when passed in India in respect of the

offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General.

(9.) When a person subject to military law is convicted of manslaughter or rape, or any other civil offence under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India, by the Governor-General, or, if he has been tried in a colony, by the Governor of the colony.

NOTE.

As to confirmation and revision generally, see ch. V paras. 89–99, and as to field general court-martial, Rule 120 and note. Confirmation is complete when the proceedings are promulgated.

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

Sub-sections (2) and (3). The effect is that revision, except for curing legal defects in the finding or sentence, can only be used for acquitting the accused or mitigating the sentence; inasmuch as revision can only be ordered in case of conviction, and if it is ordered the sentence cannot be increased. See Rule 51 and note.

The Act, by declaring that an acquittal on a charge shall not require confirmation, makes the decision of the court on that charge, both as regards the facts and the law, absolute. In such a case the confirming officer must not annex to the proceedings any remarks on the conclusion of the court; at the same time, if he is of opinion that the court has been guided by principles detrimental to the discipline of the army, or that otherwise the case requires notice, he should report accordingly to superior military authority. See Rule 51 (A) and K.R., para. 590.

Where a finding on being sent back for revision is varied in any material respect by the court, a new sentence (not, however, necessarily differing from the original sentence) must be passed, for on the original finding being revoked, the sentence based upon it falls. Where a new sentence is not passed, the accused is not legally under any sentence.

Sub-section (4). See note to Rule 97. *Colony*. See the definition, which includes Cyprus and British protectorates, in s. 190 (23).

Sub-section (5). See note to Rule 97 (A).

Sub-section (6). The result of this sub-section is that if a finding of conviction is not confirmed it is invalid (see also Rule 120 (A), and Ch. V, para. 5), consequently there is no conviction, and the accused has not been convicted by a court-martial for the purpose either of any subsequent trial or of any entry in the conduct book. See s. 157 and note, and Rule 56.

It has been ruled that confirmation ought to be withheld in the following cases:—

Where the provisions of s. 47 in the case of a regimental, or those of s. 48 in that of a general or district court-martial, and in either case those of ss. 50, 51, or 52 have been contravened.

Part I.

ss. 54-56.

Where evidence legally inadmissible has been admitted against the accused, and without such evidence a conviction is not justified.

Where the accused has been unduly restricted in his defence.

Where a finding of guilty has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding, with the words omitted, fails to disclose an offence of which the court could legally have convicted.

Where a special finding of guilty fails to disclose an offence of which the court might have legally convicted.

Where the charge is bad in law, even when the accused has pleaded guilty.

Where there has been such a deviation from the rules of procedure that injustice has been done to the accused.

Sub-section (7). *Active service.* See the definition in s. 189.

Sub-sections (8) and (9). *India.* See the definition in s. 190 (21).

Where an offender was tried within the limits of a presidency, the power of approval was formerly vested in the governor of the presidency, but this power was abolished by the Madras and Bombay Armies Act, 1893.

Civil offence. See s. 41.

55. [Section 55 (Summary court-martial) was repealed by s. 9 of the Army (Annual) Act, 1893.]

Conviction of less offence permissible on charge of greater.

56. (1.) An accused charged before a court-martial with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property.

(2.) An accused charged before a court-martial with embezzlement may be found guilty of stealing or fraudulently misapplying money or property.

(3.) An accused charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4.) An accused charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(5.) An accused charged before a court-martial with any other offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.

NOTE.

This section will often prevent a failure of justice by permitting a person charged with one of the offences mentioned in the section to be found guilty of a cognate offence.

Moreover, a man charged with an offence committed under circumstances involving a higher degree of punishment may be found guilty of the same offence under circumstances involving a less degree of punishment.

For example, a man charged with striking his superior officer in the execution of his office may be convicted of striking his superior officer; and a man charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or, again, a man charged with wilfully allowing the escape of a person in custody may be found guilty of allowing his escape without reasonable excuse. The converse, of

course, is not allowed; that is to say, a person charged with an offence cannot be convicted of a greater offence of the same class.

In practice it will usually be expedient to prefer alternative charges, one charging the greater and the other the less offence, rather than to rely on this section. See Rules, Appendix I, Note as to use of Forms of Charges (6), p. 530 below.

But except in the cases specified in this section a court has no power to find a person guilty of any offence except that with which he is charged. A court, however, may (as allowed by Rule 44 (C)) find a person guilty of a charge with the exception of certain words or with certain immaterial variations, and this finding will be valid so long as in its reduced or varied form it discloses an offence under the Act.

Execution of Sentence.

Commutation and remission of sentences.

57. (1.) The confirming authority may, when confirming the sentence of any court-martial, mitigate or remit the punishment thereby awarded, or commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as is in this Act mentioned. The confirming authority may also suspend for such time as seems expedient the execution of a sentence.

(2.) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate or remit the punishment thereby awarded, or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned; that is to say,

(*a.*) As respects persons undergoing sentence in any place whatever, His Majesty or the Commander-in-Chief or the officer commanding the district or station where the prisoner subject to such punishment may for the time be, or any prescribed officer; and

(*b.*) As respects persons undergoing sentences in India, the Commander-in-Chief of the forces in India, or such other officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint; and

(*c.*) As respects persons undergoing sentences in any colony, the officer commanding the forces in that colony; and

(*d.*) As respects persons undergoing sentences in any place not in the United Kingdom, India, or a colony, the officer commanding the forces in such place.

(3.) Provided that the power given by this section shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorised

Part I. s. 57.

by such confirming authority or other superior military authority to exercise such power.

(4.) An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment.

(5.) The provisions of this Act with respect to an original sentence of penal servitude, imprisonment, or detention shall apply to a sentence of penal servitude, imprisonment, or detention imposed by way of commutation.

NOTE.

See Ch. V, para. 98, and as to diminution of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see Rule 54. See also as to duty of confirming officer, K.R., paras. 587-591.

Mitigation is the awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence.

Remission may be remission of the whole or of part of the sentence; thus a sentence of imprisonment with hard labour may be remitted altogether, or a portion of the term, or the hard labour may be remitted. As to notification of remission of imprisonment or detention, K.R., para. 632.

Commutation is changing the description of punishment by awarding a punishment lower in the scale of punishments in s. 44—as imprisonment in lieu of penal servitude—or dismissal in lieu of cashiering—or detention in lieu of imprisonment; but the effect of s. 44 (1A) is that imprisonment can only be commuted to an equal or shorter term of detention, *e.g.*, the commutation of three months imprisonment to four months detention would be illegal.

Suspension of the execution of a sentence, which can only take effect after confirmation, does not postpone the commencement of any term of penal servitude, imprisonment, or detention.

The powers conferred by this section may be exercised by the confirming authority, as such, under sub-section (1), only when confirming the sentence: after promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the above powers can only be exercised by the authorities specifically mentioned in sub-section (2), or by the other authorities prescribed for the purpose by Rule 126 (C), and (under subs. (3)) they cannot be exercised by any officer holding a command inferior to the confirming authority without leave from that authority or some other superior authority.

The confirming authority as such cannot commute a punishment into general service. See s. 83 (7) and note.

For definitions of India and colony, see s. 190 (21) and (23).

The section allows an authority to commute a punishment "for any less punishment *or punishments*" to which the offender might have been sentenced. As, however, there is no standard of comparison between one punishment and two or more other punishments, and as it is necessary that the commuted sentence should be less than the original sentence, the validity of the commutation of one punishment to two or more punishments is liable to be called in question. Partial commutation by the authority of any one

punishment by the substitution for a portion thereof of another punishment is illegal. Thus, where in a case of "losing by neglect" a court passed a sentence of 84 days' imprisonment, but omitted to pass a sentence of stoppage, it was ruled that the confirming authority could not commute a portion of the imprisonment to the stoppages which the court might have awarded.

The penal servitude, imprisonment, or detention, under commutation, must commence on the date of the original sentence, even though that sentence was not one of penal servitude, imprisonment, or detention, as the case may be.

Sub-section (2) (*b*). Paragraph (*b*) in its present form gives effect to the Madras and Bombay Army Act, 1893, which abolished the office of provincial Commander-in-Chief and enacted that anything to be done to, by, or before, any of the officers whose office was abolished by the Act, might be done to, by, or before, such officer as the Commander-in-Chief in India, with the approval of the Governor-General in Council, might appoint.

Effect of sentence of penal servitude.

58. When a person subject to military law is convicted by a court-martial, whether in the United Kingdom, or elsewhere, either within or without His Majesty's dominions, and is sentenced to penal servitude, such conviction and sentence shall be of the same effect as if such person (in this Act referred to as a military convict) had been convicted in the United Kingdom of an offence punishable by penal servitude and sentenced to penal servitude by a competent civil court, and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly.

NOTE.

Sections 58 to 62 relate to penal servitude, and provide separately for the execution of sentences of penal servitude passed in the United Kingdom, in India or a colony, and in a foreign country.

Before the passing of the Army Discipline and Regulation Act, 1879, a convict sentenced to penal servitude in India or a colony might be compelled to undergo a portion of his sentence in the country where he was sentenced. The effect of these sections and of the proviso to s. 131 is, that wherever a sentence of penal servitude is passed, the convict (subject to the exceptions mentioned in the proviso and the note to s. 131), must, as soon as practicable, be brought to the United Kingdom to undergo his sentence in some prison in which a prisoner sentenced to penal servitude in the United Kingdom can be confined. (See the definition of "penal servitude prison" in s. 62 (1)).

These sections further enable a convict to be discharged by certain military authorities at any time before he reaches his penal servitude prison, and also provide for his conveyance in custody from the place where he is sentenced to penal servitude, however distant, until his arrival in the prison where he is to undergo his sentence.

In the United Kingdom, though he may be kept in military custody till sent to a penal servitude prison, his period of military custody will necessarily be short, as his commanding officer or other military authority should commit him, without unnecessary delay after the promulgation of the sentence, to some public prison. He then comes under the jurisdiction of the Home Secretary, and is out of the jurisdiction of the military authorities.

Abroad, on the other hand, a soldier under sentence of penal servitude must necessarily be kept for some length of time in intermediate custody, which may be either military custody or civil custody, and he may be moved from

Part I. — s. 58–60.

one to the other as occasion requires. When in civil custody he must be kept in an "authorised prison" (s. 62), unless it is not practicable, in which case (s. 60 (5)) he may be confined temporarily in any civil prison with the assent of the authority having jurisdiction over the prison.

For commencement of term of penal servitude, see s. 68.

The provisions of the Act will continue to apply to a person sentenced to penal servitude during the term of his sentence, though he has been discharged or dismissed from His Majesty's service; s. 158.

Execution of sentences of penal servitude passed in the United Kingdom.

59. (1.) Where a sentence of penal servitude is passed by a court-martial in the United Kingdom, the military convict on whom such sentence has been passed, shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law, and until so transferred shall be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) At any time before his arrival at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(4.) Any one or more of the following officers shall be the committing authority for the purposes of this section, namely,—

(*a.*) The Commander-in-Chief;

(*b.*) The Adjutant-General;

(*c.*) The commanding officer of the military convict; and

(*d.*) Any other prescribed officer.

(5.) Any one of the following officers shall be the discharging authority for the purposes of this section, namely,—

(*a.*) The Commander-in-Chief;

(*b.*) The Adjutant-General; and

(*c.*) Any other prescribed officer.

NOTE.

Sub-section (1). *Penal servitude prison.* For definition see s. 62.

Sub-section (4). *Commanding Officer.* This means the commanding officer as defined by Rule 129. See K.R. para. 456.

Prescribed officer. See Rule 126 (A) for the other officers who have been prescribed as committing authorities for the purposes of this section.

For general provisions as to the form of orders of military authorities, see s. 172.

For form of order of commitment, see Rules, App. III, Form A, p. 585 below; and see generally K.R., paras. 600–606.

Sub-section (5). The military authorities can only discharge a military convict before he reaches a penal servitude prison and not afterwards.

No officer has been prescribed as discharging authority.

Execution of sentence of penal servitude passed in India or colony.

60. (1.) Where a sentence of penal servitude is passed by a court-martial in India or any colony, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law.

(2.) The order of the committing authority (hereafter in this

section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) The military convict during the period which intervenes between the passing of his sentence and his arrival at the penal servitude prison (in this section referred to as the term of his intermediate custody) shall be deemed to be in legal custody.

(4.) The military convict during his term of intermediate custody may be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require, and may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his detention and removal.

(5.) "Civil custody," for the purposes of this section, means custody in any authorised prison; nevertheless, where it is not practicable to place the military convict in an authorised prison, he may, by way of civil custody, be confined temporarily in any other prison with the assent of the authority having jurisdiction over that prison.

(6.) The military convict whilst in any prison in which he may legally be placed may be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

(7.) An order of the removing authority (hereafter in this sectioned mentioned) shall be a sufficient authority for the transfer of the military convict from military custody to civil custody, and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient during the term of his intermediate custody.

(8.) The removing authority during the term of the intermediate custody of the military convict may from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness or for trial or otherwise; and an order of such authority shall be a sufficient warrant for the delivering him into military custody, and detaining him in custody until he can be returned, and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

(9.) Any directions of the removing authority relating to the mode in which the military convict is to be dealt with during the term of his intermediate custody may be contained in the same order or in several orders; and if the orders are more than one, they may be by different officers and at different times.

(10.) At any time before the military convict arrives at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(11.) Any one or more of the following officers shall be the

Part I. s. 60.

committing authority for the purposes of this section; that is to say,

(*a.*) In India—

(i.) The Commander-in-Chief of the forces in India;

* * * * *

(iii.) The Adjutant-General in India;

* * * *

(*b.*) In a colony, the officer commanding the forces in that colony; and

(*c.*) In any case, whether in India or in a colony, the prescribed officer.

(12.) Any one or more of the following officers shall be the removing authority for the purposes of this section; that is to say,

(*a.*) Any officer in this section named as the committing authority; also

(*b.*) The officer commanding the military district or station where the military convict may for the time being be, also

(*c.*) Any other prescribed officer.

(13.) Any of the following officers shall be the discharging authority for the purposes of this section; that is to say,

(*a.*) The officer who confirmed the sentence; also

(*b.*) Any officer in this section named as the committing authority; also

(*c.*) Any other prescribed officer.

NOTE.

Sub-section (1). For definition of India and colony, see s. 190 (21) and (23); but it must be recollected that for the purpose of this section and the other provisions relating to the execution of sentences of penal servitude, the Channel Islands and the Isle of Man are deemed to be colonies; section 187 (2).

As to removal to United Kingdom of prisoners sentenced to penal servitude in India or a colony, see the proviso to s. 131.

Sub-section (5). For definition of *authorised prison*, see s. 62 (2).

Sub-section (8). The statute 43 Geo. III, c. 140, empowers any of His Majesty's judges to award a writ of *habeas corpus* for bringing any prisoner detained in any prison in England (whether subject to military law or not) before a court-martial for the purpose of giving evidence; and s. 9 of 16 & 17 Vict. c. 30, empowers any of His Majesty's judges to issue a warrant or order for the like purpose, and also for the purpose of bringing up a prisoner to give evidence before a civil court; and s. 11 of 61 & 62 Vict. c. 41, empowers a Secretary of State to order the production of a prisoner at any place where his presence is required in the interest of justice or for the purpose of any public inquiry. This sub-section enables an offender sentenced to penal servitude to be brought up by order of the military authority either before a court-martial or a civil court to give evidence, during the interval between the passing of the sentence and his arrival at the penal servitude prison.

Sub-sections (11), (12), (13). *Prescribed officer.* See Rule 126 (A), for the other officers who have been prescribed as committing authorities for the purpose of this section.

No officer has been prescribed as removing or discharging authority under sub-sections (12) and (13).

As to discharge of convicts, see note to subs. (5) of s. 59.

For general provisions as to the form of orders of military authorities, see s. 172.

For form of order of commitment, see Rules, App. III, Form B, p. 585 below; and see also K.R., paras. 600–606.

Execution of sentences of penal servitude passed in a foreign country.

61. (1.) Where a sentence of penal servitude is passed by a court-martial in any foreign country, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison for the purpose of undergoing his sentence according to law, and, until so transferred, may be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for the transfer of the military convict to a penal servitude prison.

(3.) If at any time before his arrival in the United Kingdom the military convict is brought into India or any colony, he may be dealt with by the competent military authority in India or such colony in the same manner in all respects as if he had been there sentenced by court-martial to penal servitude.

(4.) The military convict may at any time before he arrives at any place in the United Kingdom, India, or any colony, be discharged by the discharging authority (hereafter in this section mentioned) having jurisdiction in any place where the military convict may for the time being be.

(5.) Any one or more of the following officers shall be the committing authority for the purposes of this section; that is to say,

(*a.*) The officer commanding the army or force with which the military convict was serving at the time of his being sentenced;

(*b.*) The officer who confirmed the sentence of the court;

(*c.*) Any other prescribed officer;

(6.) Any committing authority under this section shall also be the discharging authority for the purposes of this section.

NOTE.

Sub-section (1). *Foreign country.* For definition see s. 190 (24).

Sub-section (3). See s. 131, and for definition of India and colony see s. 190 (21) and (23); see also s. 187 (2) as to Isle of Man and Channel Islands.

Prescribed officer. See Rule 126 (A). An officer who is a committing officer under Rule 126 does not thereby become a discharging authority for the purposes of this section; see Rule 126 (A) at end.

For general provisions as to the form of orders of military authorities, see s. 172.

For form of order of commitment, see Rules, App. III, Form B, p. 585 below; and also see K.R., paras. 600–606.

General provisions applicable to penal servitude.

62. (1.) A penal servitude prison for the purposes of the provisions of this Act relating to penal servitude means any prison or place in which a prisoner sentenced to penal servitude by a civil court

Part I
ss. 62–63.

in the United Kingdom can for the time being be confined, either permanently or temporarily.

(2.) An "authorised prison" for the purposes of the provisions of this Act relating to penal servitude means any prison in India or any colony which the Governor-General of India or the Governor of such colony may, with the concurrence of a Secretary of State, have appointed as a prison in which military convicts may, during the period of their intermediate custody, be confined.

(3.) After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the like manner as an ordinary civil prisoner under sentence of penal servitude.

NOTE.

Sub-section (1). See proviso to s. 131.

Execution of sentences of imprisonment and detention.

63. (1.) Where a sentence of imprisonment is passed by court-martial, the person on whom that sentence has been passed (in the provisions of this Act relating to imprisonment referred to as a military prisoner) shall undergo the term of his imprisonment either in military custody, or in a detention barrack, or in a public prison, or partly in one way and partly in another, and where a sentence of detention is passed by a court-martial or a commanding officer, the person on whom that sentence has been passed (in the provisions of this Act relating to detention referred to as a soldier undergoing detention) shall undergo the term of his detention either in military custody or in a detention barrack, or partly in one way and partly in the other, but not in a prison.

(2.) Any person liable to be imprisoned in a military prison may be confined in a detention barrack.

(3.) The order of the committing authority hereafter mentioned shall be a sufficient warrant for the transfer of a military prisoner to a public prison, or a detention barrack, or a soldier undergoing detention to a detention barrack.

(4.) A military prisoner while in a public prison shall be confined, kept to hard labour, and otherwise dealt with in the like manner as an ordinary prisoner under a like sentence of imprisonment ; and where the hospital or place for the reception of sick persons in a public prison or a detention barrack is detached from the prison or detention barrack, a military prisoner or a soldier undergoing detention may be detained in that hospital or place, and conveyed to or from the same as circumstances require.

(5.) A military prisoner or a soldier undergoing detention during his conveyance from place to place, or when on board ship or otherwise, may be subjected to such restraint as is necessary for his safe custody and removal.

(6.) The discharging authority hereafter mentioned may, at any time during the period of the imprisonment of a military prisoner

or of the detention of a soldier undergoing detention, by order discharge the prisoner or soldier.

(7.) The committing authority or any other prescribed authority may at any time by order remove a military prisoner from one public prison or detention barrack to another prison or detention barrack, or a soldier undergoing detention from one detention barrack to another, so that he be not removed from a prison or detention barrack in the United Kingdom to a prison or detention barrack elsewhere.

(8.) The removing authority hereafter mentioned may at any time during the period of the imprisonment of a military prisoner or of the detention of a soldier undergoing detention, from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness, or for trial or otherwise, and an order of such authority shall be a sufficient warrant for delivering him into military custody and detaining him in custody until he can be returned and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

NOTE.

Sections 63 to 66 provide for the execution of sentences of imprisonment, and of sentences of detention.

The effect of the provisions is that a person under sentence of imprisonment, if sentenced in the United Kingdom, may be kept either in military custody, or in a detention barrack, or in a public prison—that is to say, any prison in the United Kingdom in which prisoners can be confined under a sentence of a civil court, see s 64 (1); or in a military prison, that is to say, any building set apart as such by the Secretary of State under s. 133.

If sentenced in India or a colony, he may be kept in military custody, or in a detention barrack, or in some "authorised prison" in the country where sentenced, *i.e.*, a civil prison appointed as a prison for military prisoners, with the concurrence of the Secretary of State, if in India by the Governor-General, and if in a colony by the Governor of the colony (s. 65 (2)); or in a military prison—that is to say, any building set apart as such in India by the Governor-General, and in a colony by the Secretary of State, under s. 133.

If sentenced in a foreign country, then if and as soon as he is brought into the United Kingdom, India, or any colony, the provisions of the Act apply as if he had been sentenced in the United Kingdom, in India, or a colony, as the case may be; s. 66.

A prisoner may be removed from a prison or detention barrack out of the United Kingdom to a prison or detention barrack in the United Kingdom, and from one public prison or detention barrack to another public prison or detention barrack in the United Kingdom (sub-section (7)); but he cannot be removed from a prison or detention barrack in the United Kingdom to a prison or detention barrack elsewhere (sub-section (7)); and if he has remained in military custody and not been committed to a prison or detention barrack in the United Kingdom, and is removed from the United Kingdom, he cannot be committed to a prison or detention barrack elsewhere. Prisoners, therefore, in the United Kingdom, if required to be removed, can only be removed under s. 67. A prisoner sentenced in India or a colony may be

Part I. s. 63.

removed to a detention barrack wherever situate (sub-section (7)), or to a military prison wherever situate if allowed by regulation (see Rule 130), but can only be removed to an "authorised prison" in another colony if such prison has been "prescribed" for this purpose by a rule (s. 65 (1) (*c*), Rule 130). With reference to these sections, it must be recollected that under s. 187 (2) the Isle of Man and Channel Islands, and under s. 190, Cyprus, are for these purposes colonies.

Where a unit moves from one colony to another and takes its prisoners with it, they cannot be committed under their old sentence to a prison at the place of destination of the regiment unless such prison has been prescribed, *i.e.*, allowed by Rule, or is a military prison, and in the latter case the regulations on the subject must be observed.

As regards a soldier sentenced to detention, the effect of the provisions is that he may be kept either in military custody or in a detention barrack, and may be removed from any detention barrack to any other wherever situate, except that he cannot be removed from a detention barrack in the United Kingdom to one elsewhere (sub-section (7)).

As to a prisoner sentenced to more than twelve months' imprisonment or detention in India or a colony being sent home unless the court or confirming authority has for special reasons otherwise ordered, or unless he is a person to whom a declaration of the Secretary of State, made under that section is applicable, see s. 131.

Sub-section (1). *Military custody.* This expression includes branch detention barracks, and a soldier may be ordered to perform hard labour in them; but a soldier under sentence exceeding the limit for the time being prescribed for sentences to be passed in detention rooms or in branch detention barracks, must only be committed to such detention rooms or barracks, pending his removal to a civil prison, or a military prison, or a detention barrack. K.R., para. 607, and see paras. 647–660.

Sentence of imprisonment passed by court-martial. It must be remembered that a regimental court-martial has no longer power to pass sentences of imprisonment: see s. 47 (5) and notes.

Sub-section (2). Under this provision it will be possible to send naval prisoners to a detention barrack.

Sub-section (6). *Discharging authority.* It will be observed that the discharging authority under this section will sometimes have no power to remit the sentence under s. 57. It is, however, desirable that a prisoner or soldier undergoing detention should not be discharged before the expiration of his sentence without his sentence being remitted. An officer, therefore, who has power to discharge a person, but not to remit the sentence, should apply to some authority having power to remit the sentence, and obtain that remission before he orders the discharge. If, in a case of necessity, he discharges any person under sentence before making such application, he should apply immediately for the remission of the sentence.

An escaped prisoner or soldier under sentence of detention may, when captured, be recommitted to prison or a detention barrack to undergo the remainder of his sentence; but if it is desired to punish him for the escape, a charge must be preferred, and he must be tried under s. 22.

Committing authority—Discharging authority—Removing authority. See s. 64.

See, generally, as to military prisoners, K.R., paras. 607–660.

For forms of order of commitment, &c., relating to military prisoners and soldiers undergoing detention respectively, see Rules, App. III, Forms C—U, pp. 587-598 below. K.R., paras. 607–617.

64. Where a sentence of imprisonment or detention is passed or is being undergone in the United Kingdom, then for the purposes of the provisions of this Act relating to imprisonment or detention, as the case may be —

Supplemental provisions as to sentences of imprisonment or detention passed or being undergone in the United Kingdom.

(1.) The expression "public prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined.

(2.) Any one or more of the following officers shall be the committing authority :

(*a.*) The Commander-in-Chief ;

(*b.*) The Adjutant-General ;

(*c.*) The officer who confirmed the sentence ;

(*d.*) The commanding officer of the military prisoner or soldier undergoing detention ; and

(*e.*) Any other prescribed officer.

(3.) Any one of the following officers shall be the discharging authority :

(*a.*) The Commander-in-Chief ;

(*b.*) The Adjutant-General ;

(*c.*) The officer commanding the military district in which the prisoner or soldier undergoing detention may be ;

(*d.*) The officer who confirmed the sentence ;

(*e.*) Any other prescribed officer ; also,

(*f.*) Where the sentence was passed by the commanding officer, the commanding officer.

(4.) Any one or more of the following officers shall be the removing authority :

(*a.*) The Commander-in-Chief ;

(*b.*) The Adjutant-General ;

(*c.*) The officer commanding the military district in which the prisoner or soldier undergoing detention may be ;

(*d.*) Any other prescribed officer ; also,

(*e.*) Where the sentence was passed by the commanding officer, the commanding officer.

NOTE.

Paragraph (1). *Public prison.* This includes a military prison (s. 133 (1)), but not a detention barrack.

Paragraph (2). *Commanding officer.* This means the commanding officer as defined by Rule 129. See K.R., para. 456.

Prescribed officer. See Rule 126 (A) for the other officers who have been prescribed as committing authorities for the purpose of this section.

Paragraph (3), *Prescribed officer.* See Rule 126 (D) for the other officers who have been prescribed as discharging authorities for the purposes of this section.

Paragraph (4). *Prescribed officer.* See Rule 126 (B) for the other officers who have been prescribed as removing authorities for the purpose of this section.

Part I. s. 65.

65. Where a sentence of imprisonment or detention is passed or being undergone in India or any colony, then, for the purposes of the provisions of this Act relating to imprisonment or detention, as the case may be—

Supplemental provision as to sentences of imprisonment or detention passed or being undergone in India or a colony.

(1.) The expression "public prison" means any of the following prisons; that is to say,

(*a.*) where the sentence was passed in India, any authorised prison in India;

(*b.*) where the sentence was passed in a colony, any authorised prison in that colony;

(*c.*) any such authorised prison in any part of His Majesty's dominions other than that in which the sentence was passed as may be prescribed; and

(*d.*) any public prison in the United Kingdom as above defined for the purpose of the provisions of this Act relating to imprisonment in the United Kingdom:

(2.) "Authorised prison" means any prison in India or any colony which the Governor-General of India or the Governor of such colony, with the concurrence of the Secretary of State may have appointed as a prison in which military prisoners may be confined:

(3.) A military prisoner may temporarily be confined in a prison not a public prison, with the assent of the authority having jurisdiction over such prison. And a military prisoner who is to undergo his sentence in the United Kingdom, until he reaches a prison in the United Kingdom in which he is to undergo his sentence, may be kept in military custody or in civil custody, and partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody, and from civil custody to military custody, as occasion may require.

(4.) Any one or more of the following officers shall be the committing authority; that is to say,

(*a.*) In India—

(i.) The Commander-in-Chief of the forces in India;

* * * * *

(iii.) The Adjutant-General in India; and

* * * * *

(*b.*) In a colony, the officer commanding the forces in that colony; and

(*c.*) In any case, whether in India or in a colony—

(i.) The officer who confirmed the sentence;

(ii.) The commanding officer of the military prisoner or soldier undergoing detention; and

(iii.) Any other prescribed officer:

(5.) Any of the following officers shall be the discharging authority :

(*a.*) The officer commanding the military district or station in which the prisoner or soldier undergoing detention may be ;

(*b.*) Any officer in this section named as a committing authority, with this exception, that the commanding officer shall only be a discharging authority where the sentence was passed by a commanding officer ; and

(*c.*) Any other prescribed officer.

(6.) Any one or more of the following officers shall be the removing authority :

(*a.*) Any officer in this section named as a committing authority ;

(*b.*) The officer commanding the military district or station where the prisoner or soldier undergoing detention may be ; and

(*c.*) Any other prescribed officer.

NOTE.

Paragraph (1). *Public prison* includes a military prison, s. 133, but not a detention barrack.

For definitions of India and colony, see s. 190 (21) and (23) ; and as to the Isle of Man and Channel Islands, see s. 187 (2).

(*c.*) These have been prescribed by Rule 130 : see note to that Rule. See also s. 134, and K.R., paras. 610, 611.

Paragraph (2). Authorised prison includes a military prison in India, s. 133, but not a detention barrack.

Paragraph (4). *Commanding officer.* This means the commanding officer as defined by Rule 129. See K.R., para. 456.

Prescribed officer. See Rule 126 (A).

Paragraph (5.) *Prescribed officer.* See Rule 126 (D).

See generally as to orders and warrants of officers, s. 172 and note.

Supplemental provision as to sentences of imprisonment and detention passed in a foreign country.

66. Where a sentence of imprisonment or detention is passed by a court-martial or commanding officer in any foreign country, then if and as soon as the military prisoner or soldier undergoing detention on whom such sentence has been passed is brought into the United Kingdom or India, or any colony, the provisions of this Act shall apply in the same manner in all respects as if the sentence of imprisonment or detention had been passed in the United Kingdom, India, or any colony, as the case may be, with this addition, that the officer commanding the army or force to which the military prisoner or soldier undergoing detention belonged at the time of his being sentenced shall also be deemed to be a committing authority.

NOTE.

Imprisonment : It must be remembered that a regimental court-martial and a commanding officer can no longer pass a sentence of imprisonment.

Commanding officer : see note to s. 59.

Foreign country ; India ; Colony. For definitions, see s. 190 (21), (23), and (24); and as to Isle of Man and Channel Islands, see s. 187 (2).

Part I.

ss. 67-68.

Removal of prisoner or soldier undergoing detention to place where corps is serving.

67. (1.) The competent military authority (hereafter in this section mentioned) may give directions for the delivery into military custody of any military prisoner or soldier undergoing detention for the time being undergoing his sentence of imprisonment or detention, and the removal of such prisoner or soldier, whether with his corps or separately, to any place beyond the seas where the corps, or any part thereof, to which for the time being he belongs, is serving or under orders to serve.

(2.) The directions of such competent military authority, or an order of the removing authority issued in pursuance of such directions, shall be sufficient authority for the removal of such prisoner or soldier from the prison or detention barrack in which he is confined, and for his conveyance in military custody to any place designated, and for his intermediate custody during such removal and conveyance.

(3.) The competent military authority may further give directions for the discharge of the prisoner or soldier, either conditionally or unconditionally at any time while he is in military custody under this section.

(4.) For the purposes of this section any one or more of the following officers shall be the competent military authority:

(*a.*) In the United Kingdom—

(i.) The Commander-in-Chief;

(ii.) The Adjutant-General: and

(iii.) Any other prescribed officer.

(*b.*) In India—

(i.) The Commander-in-Chief of the forces in India;

* * * * *

(iii.) The Adjutant-General in India; and

* * * * *

(*c.*) In a colony, the officer commanding the forces in that colony: and

(*d.*) In any case, whether in India or in a colony, the prescribed officer.

NOTE.

The object of this section is to enable soldiers who are undergoing sentences of imprisonment or detention to be removed in custody for foreign service. Soldiers sentenced for military offences (desertion, for instance), may in many cases be given a fresh opportunity of recovering their characters by being at once removed to a foreign station. The section will also prevent offences committed immediately before embarkation for service from escaping all punishment; but it gives no authority to commit offenders committing such offences to any public prison on their arrival at the foreign station.

Prescribed officer. See Rule 126 (B), for the other officers who have been prescribed as the competent military authority for the purpose of this section.

For definition of India and colony, see s. 190 (21) and (23); and as to the Isle of Man and Channel Islands, see s. 187 (2).

Commencement of term of

68. (1.) The term of penal servitude, imprisonment, or detention to which a person is sentenced by a court-martial, whether the

sentence has been revised or not, and whether the person is already undergoing sentence or not, shall be reckoned to commence on the day on which the original sentence and proceedings were signed by the president of the court-martial.

penal servitude, imprisonment, or detention.

(2.) An offender under this Act shall not be subject to imprisonment or detention for more than two consecutive years, whether under one or more sentences.

NOTE.

Under this section a term of penal servitude, imprisonment, or detention, under sentence by court-martial cannot be made to commence at the expiration of a previous term of penal servitude, imprisonment, or detention, but must commence on the day on which the sentence is signed by the president of the court. If, therefore, the court desire to award imprisonment (say three months) on a prisoner already in prison for six months' imprisonment, of which three months are unexpired, the court must award six months, and similarly with respect to sentences of penal servitude and detention.

The period of imprisonment or detention which a soldier is to suffer, whether under one sentence or several sentences, must never exceed two years. This restriction applies where a soldier is tried at the expiration of a sentence of imprisonment or detention for an offence committed during that sentence. K.R., para. 584. Two years is the maximum period which a prisoner can usually endure according to the system of imprisonment with hard labour in civil prisons in the United Kingdom, and is, in many cases, a more severe punishment than five years' penal servitude. Any period passed in military custody or in imprisonment by the civil power between two periods of imprisonment, or of detention, or between a period of imprisonment and a period of detention, or *vice versâ*, is to be reckoned as part of the term. But where there is even a single day's actual freedom, whether by release or escape, the continuity is broken.

No restriction is imposed on the duration of a sentence of penal servitude, as penal servitude for life is authorised for every offence for which penal servitude can be imposed under this Act.

Where a soldier sentenced to be reduced to the ranks was found not to have legally the grade of non-commissioned officer, and the court on revision passed a sentence of imprisonment, the imprisonment was held to commence on the date of the original sentence of reduction.

As to commencement on commutation, see note to s. 57.

MISCELLANEOUS.

Articles of War and Rules of Procedure.

Power of His Majesty to make Articles of War.

69. It shall be lawful for His Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever : Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act.

NOTE.

Formerly, as is well known, military law was contained in the annual Mutiny Act and in Articles of War framed under its authority ; see Ch. II.

Part I.

ss. 70-71.

Power of His Majesty to make rules of procedure.

70. (1.) Subject to the provisions of this Act His Majesty may, by rules to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the following matters or any of them ; that is to say,

(*a.*) The assembly and procedure of courts of inquiry;

(*b.*) The convening and constituting of courts-martial;

(*c.*) The adjournment, dissolution, and sittings of courts-martial ;

(*d.*) The procedure to be observed in trials by court-martial ;

(*e.*) The confirmation and revision of the findings and sentences of courts-martial ; and enabling the authority having power under section fifty-seven of this Act to commute sentences to substitute a valid sentence for an invalid sentence of a court-martial ;

(*f.*) The carrying into effect sentences of courts-martial;

(*g.*) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, imprisonment, or detention ;

(*h.*) Any matter in this Act directed to be prescribed ;

(*i.*) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law :

(2.) Provided always, that no such rules shall contain anything contrary to or inconsistent with the provisions of this Act.

(3.) All rules made in pursuance of this section shall be judicially noticed.

(4.) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

(5.) The rules as to the procedure of courts of inquiry may provide for evidence being taken on oath, and may empower courts of inquiry to administer oaths for that purpose.

NOTE.

The original Rules of Procedure made under this section, and dated the 29th August, 1881, are now replaced by the Rules of Procedure, 1907, printed below, p. 448 : see page p. 453, note (*a*).

Sub-section (5) was added by the Army (Annual) Act, 1901; the power given by the sub-section has been exercised by Rule 124 (H).

Command.

Removal of doubts as to military command.

71. (1.) For the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to His Majesty's forces, it is hereby declared that His Majesty may, in such manner as to His Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over His Majesty's forces, or any part

thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised; provided that command shall not be given to any person over a person superior in rank to himself.

(2.) Nothing in this section shall be deemed to be in derogation of any power otherwise vested in His Majesty.

NOTE.

This section removes all doubts as to the power of His Majesty to regulate the command by officers of the regular forces over those forces, or over any portion of the auxiliary forces, and the command by officers of any portion of the auxiliary forces over any other portion of those forces, or over any portion of the regular forces. The provisions of the Militia Acts relating to command, and those of the Volunteer Act which limited the command of officers of the regular forces over volunteers, and of volunteer officers over any portion of the regular forces, have been repealed.

The proviso applies only to rank in relation to military command, and does not prevent an officer from having military command over an officer with higher relative rank, but no military command.

Inquiry as to and Confession of Desertion.

Inquiry by court on absence of soldier.

72. (1.) When any soldier has been absent without leave from his duty for a period of twenty-one days, a court of inquiry may as soon as practicable be assembled, and inquire in the prescribed manner on oath or solemn declaration (which such court is hereby authorised to administer) respecting the fact of such absence, and the deficiency (if any) in the arms, ammunition, equipments, instruments, regimental necessaries, or clothing of the soldier; and if satisfied of the fact of such soldier having absented himself without leave or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency (if any), and the commanding officer of the absent soldier shall enter in the regimental books a record of the declaration of such court.

(2.) If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction by court-martial for desertion.

NOTE.

In the event of a soldier being absent without leave for a period of 21 days, a court of inquiry must be assembled at once, unless he has been taken into custody, K.R., para. 673; but that paragraph does not apply in the case of absconded recruits. The soldier must have been absent for a full period of 21 days before the court can be legally assembled, and the court therefore must not be assembled until the 22nd day.

The declaration of the court should contain—

(1.) The place from which the man absented himself; and

(2.) The fact, if such fact exists, that the man illegally absent had been warned for embarkation;

(3.) The date of the deficiency, if any, and the place where it occurred.

The procedure of such a court is detailed in Rule 125: under that Rule and this section the witnesses will be sworn, but not the members of the court.

Confession by soldier of desertion or fraudulent enlistment.

73. (1.) Where a soldier signs a confession that he has been guilty of desertion or of fraudulent enlistment, a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures and the same deductions from pay (if any) as a court-martial could

Part I. ss. 73–74.

award for the said offence, or as are consequential upon conviction by a court-martial for the said offence, except such of them as may be mentioned in the order.

(2.) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession.

(3.) The competent military authority for the purposes of this section means the Commander-in-Chief or Adjutant-General, or any prescribed general officer; or, in the case of India, the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint, and in the case of a colony and elsewhere the general or other officer commanding the forces, subject in the case of India, or a colony, or elsewhere, to any directions given by the Commander-in-Chief.

NOTE.

Before accepting a confession of desertion or fraudulent enlistment signed by a soldier, care should be taken to ascertain that he fully understands the nature and consequences of his act.

He will forfeit the whole of his prior service, and be liable to serve for the original term of his enlistment reckoned from the date of his trial being dispensed with; and the forfeited service can only be restored by the Secretary of State, s. 79 (proviso): see K.R., para. 273.

The deductions from pay are regulated by s. 138 and the Pay Warrant.

For definition of India and colony, see s. 190 (21) and (23); and as to the Isle of Man and Channel Islands, see s. 187 (2).

Sub-section (3). As to India, see note to s. 57 (2) (*b*).

Prescribed general officer: See Rule 126 (F).

See also K.R., paras. 479, 541–546.

Provost Marshal.

Provost-marshal.

74. (1.) For the prompt repression of all offences which may be committed abroad, provost-marshals with assistants may from time to time be appointed by the general order of the general officer commanding a body of forces.

(2.) A provost-marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences, and may also carry into execution any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority.

Provided that a provost-martial and his assistants shall, as respects any soldier in his or their custody and undergoing field punishment, have the same powers as the governor of a military prison.

NOTE.

The provost-marshal can only be appointed abroad, and will always be a commissioned officer; his assistants may be either officers or non-commissioned

officers. K.R., para. 599. He is under this Act merely an executive officer, without any authority to award punishment himself. He can, however, arrest and detain persons committing offences who are subject to military law including therefore followers when on active service (see ss. 175, 176, 180), and can apply on active service for their trial by court-martial. If the convening officer thinks it impracticable to try the case by an ordinary court-martial, he can convene a field general court-martial which can try the accused summarily, and inflict any punishment a general court-martial can inflict, whether on officers, soldiers, or followers. See s. 49. The provost-marshal and his assistants may carry into execution the sentence, when confirmed, of such court as well as of other courts-martial, and by virtue of the proviso (introduced into the Act by the Army (Annual) Act, 1907) have the powers of the governor of a military prison as respects soldiers undergoing field punishment; the powers of such a governor are prescribed by the rules made under subs. (2) of s. 133, and, under subs. (7) of that section, in a country where active operations are being conducted, the officer commanding-in-chief has the power of the Secretary of State as to military prisons, and can thus make prison rules.

Restitution of Stolen Property.

Power as to restitution of stolen property.

75. (1.) Where a person has been convicted by court-martial of having stolen, embezzled, received, knowing it to be stolen, or otherwise unlawfully obtained, any property, and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such court-martial, or the Commander-in-Chief, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(2.) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or Commander-in-Chief to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3.) Moreover, where it appears to the confirming authority or Commander-in-Chief from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or Commander-in-Chief may, on the application of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the said sale or pawning shall be paid to the said person purchasing or taking in pawn.

(4) An order under this section shall not bar the right of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.

NOTE

The restoration under this section can only be made by order of the confirming authority, or if there is a Commander-in-Chief, by him: and an order can only deal with property or money found in the possession of the offender himself; but where the offender occupies a house, property found in that house is *primâ facie* in his possession.

Part II. ss. 75–78.

The stealing or embezzlement of property does not alter the ownership, and therefore *prima facie* the person from whom property has been stolen or embezzled is the lawful owner of it.

Care must be taken to report to the proper authority any circumstances which would justify him in making an order under this section.

As to stoppages in respect of property stolen or unlawfully obtained, &c., see K.R., para. 586.

Part II.

ENLISTMENT.

For history of service in the army, see Ch. IX, and for general explanation of this Part see Ch. X.

For regulations as to recruiting, transfers, discharge and service, see K.R., paras. 262 *et seq.*, and the Regulations for Recruiting.

Period of Service.

Limit of original enlistment.

76. A person may be enlisted to serve His Majesty as a soldier of the regular forces for a period of twelve years, or for such less period as may be from time to time fixed by His Majesty, but not for any longer period, and the period for which a person enlists is in this Act referred to as the term of his original enlistment.

Note.

Terms of original enlistment.

The terms of enlistment for the various arms of the service, and conditions of transfer, are prescribed by the Regulations above mentioned.

77. The original enlistment of a person under this Act shall be as follows, either—

(1.) For the whole of the term of his original enlistment in army service ; or

(2.) For such portion of the term of his original enlistment as may be from time to time fixed by a Secretary of State, and specified in the attestation paper, in army service, and for the residue of the said term in the reserve.

Note.

Paragraph (2). *The reserve.* This means the Army Reserve under the Reserve Forces Act, 1882. See 45 & 46 Vict. c. 48. s. 28.

Change of conditions of service.

78. (1.) A Secretary of State may from time to time, by general or special regulations, vary the conditions of service, so as to permit a soldier of the regular forces in army service, with his assent, either—

(*a.*) To enter the reserve at once for the residue unexpired of the term of his original enlistment ; or

(*b.*) To extend his army service for all or any part of the residue unexpired of such term ; or

(*c.*) To extend the term of his original enlistment up to the period of twelve years or any shorter period.

(2.) A Secretary of State may from time to time by general or special regulations vary the conditions of service so as to permit a man in the reserve, with his assent, to re-enter upon army service for all or any part of the residue unexpired of the term of his original enlistment, or for any period of time not exceeding twelve years in the whole from the date of his original enlistment.

NOTE.

The reserve. See note to last section.

As to a man entering the reserve before the time of his army service has expired, see s. 89.

The words "or any shorter period" were added by the Army (Annual) Act, 1901. The Regulations now allow extension to 7 years in the case of all branches of the service, except the artillery, in the case of which the period is 8 or 6 years: K.R., para. 262.

Reckoning and forfeiture of service.

79. In reckoning the service of a soldier of the regular forces for the purpose of discharge or of transfer to the reserve—

(1.) The service shall begin to reckon from the date of his attestation; but

(2.) Where a soldier of the regular forces has been guilty of any of the following offences:

(*a.*) Desertion from His Majesty's service; or

(*b.*) Fraudulent enlistment;

then either upon his conviction by court-martial of the offence, or (if having confessed the offence he is liable to be tried) upon his trial being dispensed with by order of the competent military authority, the whole of his prior service shall be forfeited, and he shall be liable to serve as a soldier of the regular forces for the term of his original enlistment, reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been originally attested at that date:

Provided that a Secretary of State may restore all or any part of the service forfeited under this section to any soldier who may perform good and faithful service, or may otherwise be deemed by such Secretary of State to merit such restoration of service, or may be recommended for such restoration of service by a court-martial.

NOTE.

Paragraph (2). A soldier will not forfeit service towards discharge for any absence or for any period of imprisonment or detention, but if he is convicted of desertion or fraudulent enlistment he will forfeit all his prior service, and begin again as if he had enlisted at the date of his conviction. The Secretary of State, however, may restore all or part of the forfeited service to a soldier where either the soldier performs good and faithful service, or a court-martial recommends it. See K.R., para. 273.

The paragraph provides not only for forfeiture of service on conviction, but also in cases in which on the confession of the offender trial is dispensed with (see s. 73) by order of the competent military authority. The paragraph applies to the reckoning of service for purposes of discharge or transfer to the reserve only. Forfeiture of ordinary pay is dealt with in s. 138, while forfeiture of service towards good conduct pay or pension is regulated by the Pay Warrant.

Part II. ss. 79–80.

If an army reserve man enlists and is sent back to the reserve, he does not forfeit any part of his service, but if retained with the colours, his service will be reckoned from the date of his improper attestation. See K.R., para. 274.

If he is liable to be tried. These words exclude the application of the paragraph in the case of a soldier who after three years of exemplary service has made a confession of desertion when not on active service, or of fraudulent enlistment. Under s. 161 a soldier making such a confession cannot be tried or punished, and it is not intended that he should forfeit his service under this section; but if the offence to which he confesses was that of fraudulent enlistment, he will under s. 161 forfeit all service prior to the date of his fraudulent enlistment, inasmuch as by such enlistment he has contracted to ignore that service and to serve for the term in his new attestation : and he will be held to his new contract so to serve. But under the proviso to s. 161 (added by the Army (Annual) Act, 1900) the Secretary of State has the same power of restoring service so forfeited as he has under this section: K.R., para. 273.

Proceedings for Enlistment.

Mode of enlistment and attestation.

80. (1.) Every person authorised to enlist recruits in the regular forces (in this Act referred to as the "recruiter") shall give to every person offering to enlist a notice in the form for the time being authorised by a Secretary of State, stating the general requirements of attestation and the general conditions of the contract to be entered into by the recruit, and directing such person to appear before a justice of the peace either forthwith or at the time and place therein mentioned.

(2.) Upon the appearance before a justice of the peace of a person offering to enlist, the justice shall ask him whether he has been served with and understands the notice and whether he assents to be enlisted, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor.

(3.) If he does not appear before a justice, or on appearing does not assent to be enlisted, no further proceedings shall be taken.

(4.) If he assents to be enlisted—

(*a.*) The justice, after cautioning such person that if he makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the attestation paper for the time being authorised by a Secretary of State, and shall take care that such person understands each question so read, and after ascertaining that the answer of such person to each question has been duly recorded opposite the same in the attestation paper, shall require him to make and sign the declaration as to the truth of those answers set forth in the said paper, and shall then administer to him the oath of allegiance contained in the said paper :

(*b.*) Upon signing the declaration and taking the oath, such

person shall be deemed to be enlisted as a soldier of His Majesty's regular forces :

(*c.*) The justice shall attest by his signature, in manner required by the said paper, the fulfilment of the requirements as to attesting a recruit, and shall deliver the attestation paper, duly dated, to the recruiter :

(*d.*) The fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice :

(*e.*) The officer who finally approves of a recruit for service shall, at his request, furnish him with a certified copy of his attestation paper.

(5.) The date at which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of the attestation of such recruit.

(6.) The competent military authority, if satisfied that there is any error in the attestation paper of a recruit, may cause the recruit to attend before some justice of the peace, and that justice, if satisfied that such error exists, and is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper as amended shall thereupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper.

(7.) Where the regulations of a Secretary of State under this part of this Act require duplicate attestation papers to be signed and attested, this section shall apply to both such duplicates, and in the event of any amendment of an attestation paper the amendment shall be made in both of the duplicate attestation papers.

NOTE.

A man is under this Act enlisted by the act of attestation ; and the recruiter's gift of the shilling is no longer necessary. He will give the form, authorised by the Secretary of State, directing the recruit to appear before a justice. The man, if he fails to appear, cannot, as heretofore, be arrested as a deserter ; and if he appears and dissents from his enlistment, he will not be liable to pay any smart money. No account will, therefore, be taken of any man before he is actually attested before a justice. As to the meaning of justice, see s. 94.

After such attestation a man can only get off his contract of enlistment by purchasing his discharge under s. 81 within three months afterwards on payment of a sum which at present is fixed at ten pounds. But discharge on this payment is a matter of right not of favour, unless it is claimed during a period when men who would otherwise be transferred to the reserve are under s. 88 continued in army service. See s. 81.

The attestation is required to be in duplicate, K.R., paras. 1900–1908.

Competent military authority. See definition in s. 101. Rule 128 (iii) for the purposes of this section adds to the officers who are included under the term "competent military authority" for the purposes generally of Part II the commanding officer of the soldier, and every officer superior in command to that commanding officer.

Part II. ss. 81-82.

Power of recruit to purchase discharge.

81. If a recruit within three months after the date of his attestation pays for the use of His Majesty a sum not exceeding ten pounds, he shall be discharged with all convenient speed, unless he claims such discharge during a period when soldiers in army service who otherwise would be transferred to the reserve are required by a proclamation of His Majesty in pursuance of this Act to continue in army service, in which case he may be retained in His Majesty's service during that period, and at the termination thereof shall, if he so require it, on the payment then of the said sum, be discharged.

Appointment to Corps and Transfers.

Enlistment for general service and appointment to corps.

82. (1.) Recruits may, in pursuance of any general or special regulations from time to time made by a Secretary of State, be enlisted for service in particular corps of the regular forces, but save as is provided by such regulations, if any, recruits shall be enlisted for general service.

(2.) The competent military authority shall as soon as practicable appoint a recruit, if enlisted for service in a particular corps, to that corps, and if enlisted for general service, to some corps of the regular forces.

NOTE.

Sub-section (2). *Appoint.* The words "appoint" and "transfer" are used in this Act in the following senses. A soldier on attestation is appointed to the corps out of which he cannot be moved without his consent, except as mentioned in the Act. This appointment differs from the appointment of a soldier to a particular office, inasmuch as it does not, like the latter appointment, require the consent of the soldier.

Any disposition of a soldier within his corps which can be legally effected independently of his consent is termed posting.

(*a.*) In the case of infantry, a soldier may be posted to a battalion of his territorial or other regiment, or to the permanent staff of any volunteers belonging to that regiment.

(*b.*) In the case of artillery, the soldier may be posted to any battery or company.

(*c.*) In the case of engineers, he may be posted to any troop or company.

(*d.*) In the case of other corps to any company or station according to their respective sub-divisions.

"Transfer" is a disposition of the soldier which moves him out of the corps to which he was originally appointed, or to which, for the time being he belongs, either with his consent or under special conditions provided by the Act.

Thus if a soldier is moved—

(*a.*) In the case of infantry, out of his territorial regiment to any other regiment or to any other corps; or

(*b.*) In the case of artillery or engineers, out of the artillery or engineers to another corps; or

(*c.*) In the case of any other corps, out of his corps into any body outside his corps,

he will be transferred.

"Attach" means removing temporarily a soldier either with or without his consent from a corps and placing him with another corps, without affecting in any way his status in the first-mentioned corps.

Competent military authority. See note on s. 80. The "competent military authority" has the same meaning in this section.

Effect of appointment to a corps and provision for transfers.

83. A soldier of the regular forces, whether enlisted for general service or not, when once appointed to a corps, shall serve in that corps for the period of his army service, whether during the term of his original enlistment or during the period of such re-engagement as is in this Act mentioned, unless transferred under the following provisions :

(1.) A soldier of the regular forces enlisted for general service may, within three months after the date of his attestation, be transferred to any corps of the regular forces of the same arm or branch of the service by order of the competent military authority.

(2.) A soldier of the regular forces may at any time with his own consent be transferred by order of the competent military authority to any corps of the regular forces.

(3.) Where a soldier of the regular forces is in pursuance of any of the foregoing provisions transferred to a corps in an arm or branch different from that in which he was previously serving, the competent military authority may by order vary the conditions of his service so as to correspond with the general conditions of service in the arm or branch to which he is transferred.

(4.) A soldier of the regular forces in any branch of the service may be transferred by order of the competent military authority to any corps of the same branch which is serving in the United Kingdom in either of the following cases—

(*a.*) when he has been invalided from service beyond the seas ; or

(*b.*) when, in the case of his corps or the part thereof in which he is serving being ordered on service beyond the seas, he is either unfit for such service by reason of his health, or is within two years from the end either of the period of his army service in the term of his original enlistment, or of such re-engagement as is in this Act mentioned.

(5.) Where a soldier of the regular forces in any branch of the service, who was enlisted to serve part of the term of his original enlistment in the reserve, and has not extended his army service for the whole of that time, is on service beyond the seas, and at the time of his corps or the part thereof in which he is serving being ordered to another station or to return home, has more than two years of his army service in the term of his original enlistment unexpired, he may be transferred by order of the competent military authority to any corps of the same branch which or a part of which is on service beyond the seas.

Part II. s. 83.

(6.) Where a soldier of the regular forces has been transferred to serve, either as a warrant officer not holding an honorary commission, or on the staff, or in any corps not being a corps of infantry, cavalry, artillery, or engineers, he may by order of the competent military authority, either during the term of his original enlistment or during the period of his re-engagement, be removed from such service and transferred to any corps of the regular forces serving in the United Kingdom, or to any corps of the regular forces serving on the station beyond the seas on which he is serving at the time of his removal, or to the corps of the regular forces in which he was serving prior to such first-mentioned transfer, either in the rank he holds at the time of his removal or any lower rank.

(7.) Where a soldier of the regular forces—

(*a.*) Has been guilty of the offence of desertion from His Majesty's service or of fraudulent enlistment, and has either been convicted of the same by a court-martial, or, having confessed the offence, is liable to be tried, but his trial has been dispensed with by order of the competent military authority ; or

(*b.*) Has been sentenced by a court-martial for any offence to a punishment not less than detention for a term of three months ;

such soldier shall be liable, in commutation wholly or partly of other punishment, to general service, and may from time to time be transferred to such corps of the regular forces as the competent military authority may from time to time order.

(8.) A soldier of the regular forces delivered into military custody or committed by a court of summary jurisdiction in any part of His Majesty's dominions as a deserter shall be liable to be transferred by order of the competent military authority to any corps of the regular forces near to the place where he is delivered or committed, or to any other corps to which the competent military authority think it desirable to transfer him, and to serve in the corps to which he is transferred without prejudice to his subsequent trial and punishment.

NOTE.

Appointed—transferred, see note on s. 82.

Paragraph (1). The transfer during these three months does not require the consent of the soldier. During those three months he is entitled to his discharge under s. 81 on proper demand and payment.

Paragraph (3). *Vary the conditions of his service.* This is to provide for such a case as the transfer of a man from the infantry to the cavalry. The time of service with the colours in some branches of the cavalry is usually longer than in the infantry, and it may consequently be necessary to lengthen the army service of the man transferred.

Paragraphs (4) and (5). *Or the part thereof in which he is serving.* These words are inserted in consequence of "corps" including an infantry terri-

torial regiment, part of which may be serving in and the other part out of the United Kingdom. It will therefore apply to the case where the battalion in which the man is serving is ordered abroad.

Paragraph (6). The references to particular corps, such as the Armourer Serjeants, the Medical Staff Corps, &c., have been repealed. All such corps are included in the general words "or in any corps not being a corps of infantry, cavalry, artillery, or engineers." And see s. 190 (15) (A) (iii).

Transferred to serve. This is held to apply to a warrant officer who has been promoted to that rank in the usual course in his own corps.

Paragraph (7). *Is liable to be tried.* These words will relieve from the operation of this paragraph a soldier who, though having confessed an offence, is exempted by s. 161 from trial and punishment. The liability to general service is a commutation of punishment which may be allowed by the competent military authority, and is not a punishment which a court-martial can award. Consequently it is not within the powers of mitigation and commutation given to confirming and other officers by s. 57. But in the case of an offence other than desertion or fraudulent enlistment, the liability arises only when the sentence awarded by the court-martial is not less than three months' detention; formerly the sentence was required to be not less than six months' imprisonment, but a term of three months was substituted for six months by the Army (Annual) Act, 1904, and detention was substituted for imprisonment by the Army (Annual) Act 1907. An order passed under this paragraph will be entered in the soldier's record of service, K.R., para. 597.

Competent military authority is defined in s. 101. Rule 128 (iv) adds to the definition, for the purpose of a transfer by consent under paragraph (2) of this section, any authority superior in command to the commanding officer of the soldier; and see Rule 128 (vi) and K.R. para. 597 as to the competent military authority for the purpose of paragraph (7).

See generally as to transfers, K.R., paras. 323–369.

Re-engagement and Prolongation of Service.

Re-engagement of soldiers.

84. (1.) Subject to any general or special regulations from time to time made by a Secretary of State, a soldier of the regular forces, if in army service, and after the expiration of nine years from the date of his original term of enlistment may, on the recommendation of his commanding officer, and with the approval of the competent military authority, be re-engaged for such further period of army service as will make up a total continuous period of twenty-one years of army service, reckoned from the date of his attestation, and inclusive of any period previously served in the reserve.

(2.) A soldier of the regular forces during his period of re-engagement shall be liable to forfeit his previous service during such period of re-engagement in like manner as he is liable under this Part of this Act during the term of his original enlistment.

(3.) A soldier of the regular forces who so re-engages shall make before his commanding officer a declaration in accordance with the said regulations.

NOTE.

Sub-section (1). *Competent military authority.* See note on s. 80. The "competent military authority" has the same meaning in this section.

Part II.

ss. 85–87.

Continuance in service after twenty-one years' service.

85. A soldier of the regular forces who has completed, or will within one year complete, a total period of twenty one years' service, inclusive of any period served in the reserve, may give notice to his commanding officer of his desire to continue in His Majesty's service in the regular forces; and if the competent military authority approve, he may be continued as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

NOTE.

Inclusive of any period served in the reserve. This meets the case where a man has been transferred to the reserve, and after staying a time in the reserve has either been called out and re-engaged, or has volunteered to serve again with the colours and has re-engaged.

Competent military authority. See note on s. 80. The "competent military authority" has the same meaning in this section.

See K.R., paras. 270–272, as to conditions, &c., of continuance in the service under this section.

Soldiers who gave notice to continue their service were formerly assumed to remain under the Act to which they were subject at the time they gave the notice, but every soldier who gives such notice after the commencement of this Act will be considered to have consented to the application to him of the whole of the provisions of Part II of this Act.

Re-engagement and continuance of service of non-commissioned officers.

86. The regulations from time to time made in pursuance of this Part of this Act may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage under section eighty-four, and to continue his service under section eighty-five of this Act, or to do either of such things, subject nevertheless to the veto of the Secretary of State or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations.

NOTE.

The object of this section is to enable regulations to be made by which a non-commissioned officer, who agrees to extend his army service for the whole of his twelve years may have the right to treat the army as his profession for life, and if he makes himself efficient and conducts himself properly, to continue in the army until he has earned a pension. For the regulations under this section, see K.R., paras. 264–272.

Prolongation of service in certain cases.

87. (1.) Where the time at which a soldier of the regular forces would otherwise be entitled to be discharged occurs while a state of war exists between His Majesty and any foreign Power, or while such soldier is on service beyond the seas, or while soldiers in the reserve are required by a proclamation in pursuance of the enactments relating to the calling out of the reserve on permanent service to continue in or re-enter upon army service, the soldier may be detained, and his service may be prolonged for such further

period, not exceeding twelve months, as the competent military authority may order; but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall, as provided by this Act, be discharged with all convenient speed.

(2.) Where the time at which a soldier of the regular forces would otherwise be entitled to be transferred to the reserve occurs while a state of war exists between His Majesty and any foreign Power, the soldier may be detained in army service for such further period, not exceeding twelve months, as the competent military authority may order, but at the expiration of that period, or any earlier period at which the competent military authority consider his services can be dispensed with, the soldier shall, with all convenient speed, be sent to the United Kingdom for the purpose of being transferred to the reserve.

(3.) If a soldier required under this section to be discharged or sent to the United Kingdom desires, while a state of war exists between His Majesty and any foreign Power, to continue in His Majesty's service, and the competent military authority approve, he may agree to continue as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the end of such state of war, or, if it is so provided by such agreement, at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

(4.) A soldier who so agrees to continue shall make before his commanding officer a declaration in accordance with and general or special regulations from time to time made by a Secretary of State.

NOTE.

Competent military authority: see s. 101, and Rule 128.

The reserve: see definition in s. 101 (2).

Sub-section (1). *Required by proclamation, &c.* The occasion must be one of imminent national danger or great emergency. (See s. 88, and Reserve Forces Act, 1882, s. 12 (4).)

Sub-section (3). This enables a man who is entitled to be discharged or transferred to the reserve to volunteer for service during the war without re-engaging, or extending his service.

In imminent national danger His Majesty may continue soldiers in army service or call out for permanent service.

88. (1.) It shall be lawful for His Majesty in Council in case of imminent national danger or of great emergency, by proclamation, the occasion being first communicated to Parliament if Parliament be then sitting, or if Parliament be not then sitting, declared by the proclamation, to order that the soldiers who would otherwise be entitled in pursuance of the terms of their enlistment to be transferred to the reserve shall continue in army service.

(2.) It shall be lawful for His Majesty by any such proclamation to order a Secretary of State from time to time to ve, and when given to revoke or vary, such directions as may seem necessary or

Part II. ss. 88–90.

proper for causing all or any of the soldiers mentioned in the proclamation to continue in army service.

(3.) Every soldier for the time being required by, or in pursuance of, such directions to continue in army service shall continue to serve in army service for the same period for which he might be required to serve, if he had been transferred to the reserve, and called out for permanent service by a proclamation of His Majesty under the enactments relating to the reserve.

(4.) Any man who has entered the reserve in pursuance of the terms of his enlistment may be called out for permanent service by a proclamation of His Majesty under the enactments relating to the calling out of the reserve on permanent service.

NOTE.

This section applies to all soldiers who have at any time been enlisted to serve part of their time in the reserve. The effect of the Reserve Forces Act, 1882, s. 14, appears to be that all men in the reserve may be required to serve for a further period of twelve months under the circumstances under which a soldier may be detained in service under s. 87.

The proclamation calling out the reserve may be made under the Reserve Forces Act, 1882, in case of imminent national danger or of great emergency. A man in Section A of the army reserve may be called out for permanent service under the Reserve Forces and Militia Act, 1898, without any proclamation or previous communication to Parliament. See Ch. XI, para. 24.

Discharge and Transfer to Reserve Force.

Transfer of soldier to reserve when corps ordered abroad.

89. In the following cases; that is to say,

(1.) Where a soldier of the regular forces has been invalided from service beyond the seas; or

(2.) Where a corps to which a soldier of the regular forces belongs, or the part thereof in which he is serving, is ordered on service beyond the seas and the soldier is either unfit for such service by reason of his health, or is within two years of the end of the period of his army service in the term of his original enlistment,

the competent military authority may by order transfer him to the reserve in like manner as if the period of his actual service were specified in his attestation paper as the portion of the term of his original enlistment which was to be spent in army service.

NOTE.

Competent military authority, see definition, s. 101 and Rule 128.

Discharge or transfer to reserve.

90. (1.) Save as otherwise provided by this Act or the Acts relating to the reserve forces, every soldier of the regular forces upon the completion of the term of his original enlistment, or of the period of his re-engagement, shall be discharged with all convenient speed, but until so discharged shall be subject to this Act as a soldier of the regular forces.

(2.) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving beyond the

seas, he shall, if he so requires, be sent to the United Kingdom, and in such case shall, with all convenient speed, be sent there free of expense, and on his arrival be discharged. If such soldier is permitted, at his request, to stay at the place where he is serving, he shall not afterwards have any claim to be sent at the public expense to the United Kingdom or elsewhere.

(3.) Every soldier of the regular forces upon the completion of the period of his army service, if shorter than the term of his original enlistment, shall be transferred to the reserve, but until so transferred shall be subject to this Act as a soldier of the regular forces.

(4.) Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving beyond the seas, he shall be sent to the United Kingdom free of expense with all convenient speed, and on his arrival shall be transferred to the reserve.

(5.) A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement, as mentioned in the second sub-section of this section, or is transferred to the reserve, shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been attested, or to any place at which he may at the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost: Provided that in the case of transfer to the reserve he shall not be entitled to be so conveyed to any place out of the United Kingdom.

NOTE.

Sub-section (1). *Save as otherwise provided.* Section 87 provides for the temporary detention of a man entitled to discharge. Section 158 gives power to detain for trial a man charged with an offence under this Act, though entitled to his discharge or transfer to the reserve.

As to time of discharge, see s. 92, and as to postponement of transfer to the reserve, see s. 87.

Sub-section (4). As to power to allow a reservist to reside out of the United Kingdom, see the Reserve Forces Acts, 1899 and 1906, p. 632 below; and see Army Reserve Regulations, paras. 73-76.

Delivery of lunatic soldier on discharge with his wife or child at workhouse, or of dangerous lunatic at asylum.

91. (1.) A Secretary of State, or any officer deputed by him for the purpose, may, if he think proper, on account of a soldier's lunacy, cause any soldier of the regular forces on his discharge, and his wife and child, or any of them, to be sent to the parish or union to which under the statutes for the time being in force he appears, from the statements made in his attestation paper and other available information, to be chargeable; and such soldier, wife, or child, if delivered after reasonable notice, in England or Ireland at the workhouse in which persons settled in such parish or union are received, and in Scotland to the inspector of poor of such parish, shall be received by the master or other proper officer of such workhouse or such inspector of poor, as the case may be:

Part II. ss. 91–92.

(2.) Provided that a Secretary of State, or any officer deputed by him for the purpose, where it appears to him that any such soldier is a dangerous lunatic, and is in such a state of health as not to be liable to suffer bodily or mental injury by his removal, may, by order signified under his hand, send such lunatic direct to an asylum, registered hospital, licensed house or other place in which pauper lunatics can legally be confined; and for the purpose of the said order the above-mentioned parish or union shall be deemed to be the parish or union from which such lunatic is sent.

(3.) In England the lunatic shall be sent to the asylum, hospital, house, or place to which a person in the workhouse aforesaid, on becoming a dangerous lunatic, can by law be removed; and an order of the Secretary of State or officer under this section shall be of the same effect as a summary reception order within the meaning of the Lunacy Act, 1890, and the like proceedings shall be taken thereon as on an order under that Act.

53 & 54 Vict. c. 5.

(4.) The Secretary of State or officer, before making the said order in respect of a lunatic who is liable to be delivered to the inspector of poor of a parish in Scotland, may require the inspector of poor of that parish to specify the asylum to which such lunatic if in the parish would be sent, and it shall be the duty of such inspector forthwith to specify such asylum, and thereupon the Secretary of State or officer may make the said order for sending the lunatic to that asylum; and such order shall be of the same effect as an order by the sheriff within the meaning of section fifteen of the Lunacy (Scotland) Act, 1862, and the like proceedings shall be taken thereon as on an order under that section.

25 & 26 Vict. c. 54.

(5.) In the case of any such lunatic who is liable to be delivered at a workhouse in Ireland at which persons settled in the said union are received, a Secretary of State, or any officer deputed by him for the purpose, may, by order under his hand, send such lunatic to the asylum of the district in which such union is situate; and such order shall be of the same effect as a warrant under the hands and seals of two justices given under the provisions of the tenth section of the Lunacy (Ireland) Act, 1867.

30 & 31 Vict. c. 118.

NOTE.

This section allows a Secretary of State, or an officer deputed by him for the purpose, to send a lunatic soldier to the workhouse of the union to which, according to the statements in his attestation paper and other available information, he appears to be chargeable. If the Secretary of State, or the deputed officer, considers the soldier to be a dangerous lunatic, he may order him to be removed direct to the asylum to which the lunatic could be removed if he had been first removed to the workhouse; *i.e.*, in England, to the county or borough asylum.

As to disposal of lunatic soldiers on discharge, see K.R. 406–408.

Regulations as to discharge of soldiers.

92. (1.) A soldier of the regular forces shall not be discharged from those forces, unless by sentence of court-martial with ignominy,

or by order of the competent military authority, or by authority direct from His Majesty, and until duly discharged in manner provided by this Act and by regulations of the Secretary of State under this Act shall be subject to this Act.

(2.) To every soldier of the regular forces who is discharged, for whatever reason he is discharged, there shall be given a certificate of discharge, stating such particulars as may be from time to time required by regulations of a Secretary of State under this Act.

NOTE.

The terms of the attestation of a soldier bind him to serve so long as his services are required. Consequently the Crown has always a right to discharge him if his services are not required. When a soldier is discharged he receives a certificate of discharge, and a certificate of character; but in certain cases special certificates of discharge are issued in lieu of the ordinary certificates.

Until the formalities of the discharge are complete (which they are on the confirmation of the "proceedings on discharge," as to which see K.R., paras. 376-390) a soldier remains subject to military law; but any undue delay in carrying out the discharge would give good ground for complaint on the part of the soldier.

The certificates of discharge and character are signed by the prescribed authority, and delivered to the man on his last day of service. See Ch. X, para. 30, K.R., paras. 413-421.

By sentence of court-martial. Not a regimental court-martial; see s. 47 (5).

Competent military authority. See s. 101 and Rule 128.

Authorities to enlist and attest Recruits.

Regulations as to persons to enlist, and enlistment of soldiers.

93. A Secretary of State may from time to time make and when made revoke and alter, a general or special order, making such regulations, giving such directions, and issuing such forms as he may think necessary or expedient, respecting the persons authorised to enlist recruits for His Majesty's regular forces, and for the purpose of such enlistment, and generally for carrying this part of this Act into effect; and any such order shall be of the same effect as if enacted in this Act.

NOTE.

See K.R., para. 261, and the Recruiting Regulations.

Justices of the peace for the purposes of enlistment.

94. For the purposes of the attestation of soldiers in pursuance of this part of this Act:—

An officer in the United Kingdom or elsewhere, if authorised in that behalf under the regulations of a Secretary of State, also every person exercising the office of a magistrate in India or a colony, and also each of the following persons, shall have the authority of a justice of the peace and be deemed to be included in the expression "justice of the peace" wherever used in this part of this Act in relation to the attestation of soldiers; that is to say,

In India, any person duly authorised in that behalf by the Governor-General; and in the territories of any native state in India, the person performing the duties

Part II.
ss. 94–96.

of the office of British resident or political agent therein, or any other person authorised in that behalf by the Governor-General of India; and

In a colony, any person duly authorised in that behalf by the governor of the colony; and

Beyond the limits of the United Kingdom, India, and a colony, any British consul-general, consul, or vice-consul, or person duly exercising the authority of a British consul.

NOTE.

It must be recollected that a justice of the peace can, in most cases, only act when within the county or borough for which he is justice.

The persons named in this section will have authority to attest, but not to enlist or re-engage soldiers, so that consuls, who were formerly authorised by the Mutiny Act to enlist soldiers, no longer have that power, unless expressly authorised by order of the Secretary of State under the last section.

The officers authorised to attest recruits are specified in the Recruiting Regulations, paras. 118, 119.

In Ireland a man is not to be taken for attestation before a magistrate appointed under the Towns Improvement Act, and in Scotland not before a magistrate who is not a justice of the peace.

For definitions of India and colony, see s. 190 (21) (23).

Special provisions as to Persons to be Enlisted.

Enlistment of aliens, negroes, &c.

95. (1.) Any person who is for the time being an alien may, if His Majesty think fit to signify his consent through a Secretary of State, be enlisted in His Majesty's regular forces, so, however, that the number of aliens serving together at any one time in any corps of the regular forces shall not exceed the proportion of one alien to every fifty British subjects, and that an alien so enlisted shall not be capable of holding any higher rank in His Majesty's regular forces than that of a warrant officer or non-commissioned officer:

(2.) Provided that, notwithstanding the above provisions of this section, any inhabitant of any British protectorate and any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this Part of this Act, and when so enlisted, shall, while serving in His Majesty's regular forces, be deemed to be entitled to all the privileges of a natural-born British subject.

NOTE.

See Ch. X, paras. 27, 28.

The proviso to this section enables inhabitants of British protectorates, and negroes and persons of colour, although aliens, to be enlisted without any restriction in point of number, as if they were natural-born British subjects.

This section will apply to all persons enlisted under the enactments which are replaced by this section.

Claims of masters to apprentices.

96. The master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him

while under the age of twenty-one years as follows, and not otherwise :

(1.) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in that behalf specified in the First Schedule to this Act, and obtain from the justice a certificate of having taken such oath, which certificate the justice shall give in the form in the said schedule, or to the like effect :

(2.) A court of summary jurisdiction within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master, but if satisfied that the apprentice stated on his attestation that he was not an apprentice may, and if required by or on behalf of the said commanding officer shall, try the apprentice for the offence of making such false statement, and if need be may adjourn the case for the purpose :

(3.) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from His Majesty's service :

(4.) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound :

(5.) A master who gives up the indenture of his apprentice within one month after the attestation of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistm as has not been paid to the apprentice before notice was given of his being an apprentice.

NOTE.

Court of summary jurisdiction. See ss. 166–169 and 190 (34)–(36)

Application of apprentice provisions to indentured labourers.

97. The provisions of this part of this Act with respect to apprentices shall apply to a person who at the time of his attestation is an indentured labourer in a colony, with these qualifications, that such indentured labourer, if imported at the expense of the employer or of the colony in consideration of the indenture under which he is serving, may be claimed although above the age of twenty-one years, and though bound for a less period or at an older age than is above specified.

NOTE.

For definition of colony, see s. 190 (25).

Part II.

Offences as to Enlistment.

ss. 98–100. Penalty on unlawful recruiting.

98. If a person without due authority—

(1.) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for His Majesty's regular forces, or in relation to recruits for such forces; or

(2.) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces; or

(3.) Receives any person under any such advertisement as aforesaid; or

(4.) Directly or indirectly interferes with the recruiting service of such forces;

he shall be liable on summary conviction to a fine not exceeding twenty pounds.

NOTE.

On summary conviction, i.e., before magistrates, see ss. 166–169.

Recruits punishable for false answers.

99. (1.) If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, he shall be liable on summary conviction to be imprisoned with or without hard labour for any period not exceeding three months.

(2.) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority, to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence.

NOTE.

Sub-section (1). *On summary conviction, i.e.*, before magistrates, see ss. 166–169.

Sub-section (2). The offender may be tried and punished in any place where he may for the time being happen to be (s. 159, as to courts-martial, and s. 166 as to civil courts of summary jurisdiction), as well as in the place where the offence was committed, that is to say, where he made the false answer.

A court of summary jurisdiction cannot entertain a charge of false answer on attestation, when the answer was made more than six months before the time when proceedings are commenced.

Court of summary jurisdiction. See definition in s. 190 (35).

Competent military authority. See definition in s. 101. Rule 128 (v) adds to the definition for the purposes of this section any officer having power to convene a district court-martial for the trial of the soldier.

This section extends to every soldier, whenever enlisted.

Under s. 2 of the Seamen's and Soldiers' False Characters Act, 1906 (6 Edw. 7, c. 5) a person who uses, or gives for use, on enlistment a false statement as to character or previous employment is liable on summary conviction to a fine not exceeding twenty pounds.

Miscellaneous as to Enlistment.

Validity of attestation and enlistment or re-engagement.

100. (1.) Where a person after his attestation on his enlistment, or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be

deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorised by this Act; and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not until such person is discharged in pursuance of his claim affect his position as a soldier in His Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge.

(2.) Where a person is in pay as a soldier in any corps of His Majesty's regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.

(3.) Where a person claims his discharge on the ground that he has not been attested or re-engaged or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority, who shall as soon as practicable submit it to a Secretary of State, and if the claim appears well grounded the claimant shall be discharged with all convenient speed.

NOTE.

Sub-section (2). This meets the case of a man who has been receiving pay without ever having been legally attested or engaged. Such a case should but seldom arise under the present law and practice of enlistment, but if it should (as *e.g.*, if an alien has by making a false answer been enlisted without due authority), the above enactment will effectually prevent a man who has actually served from suddenly repudiating his liability to the rules of the service, and thus evading punishment when charged with or sentenced for an offence.

Competent military authority. See definition in section 101, and Rule 128.

This section extends to every soldier, whenever enlisted.

Definition for purposes of Part II of competent military authority and reserve.

101. (1.) Any act or thing authorised or required by this Part of this Act to be done by, to, or before the competent military authority may be done by, to, or before the Commander-in-Chief or the Adjutant-General, or any officer prescribed in that behalf.

(2.) For the purposes of this Part of this Act the expression "reserve" means the first class of the army reserve force.

NOTE.

Prescribed. See Rule 128, for the other officers who have been prescribed as the competent military authority for the purposes of Part II of the Army Act.

For the purposes of particular sections in this Part, and of transfer by consent, Rule 128 also prescribes other officers.

Army reserve force, i.e., the army reserve under the Reserve Forces Act, 1882 (45 and 46 Vict., c. 48), s. 28: see ch. xi, paras. 13 *et seq.*

Part III, ss. 102–103.

Part III.

BILLETING AND IMPRESSMENT OF CARRIAGES.

This part relates only to the United Kingdom.

Billeting of Officers and Soldiers.

Suspension of 3 Chas. I. c. 1; 31 Chas. 2, c. 1; 6 Anne (I.), c. 14, as to billeting.

102. During the continuance in force of this Act, so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers and soldiers on any inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorised by this Act.

NOTE.

The Acts suspended by this section are in the case of England and Ireland those referred to in the marginal note to this section.

Obligation of constable to provide billets for officers, soldiers, and horses.

103. (1.) Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of His Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route and stated to require quarters.

(2.) A route for the purposes of this part of this Act shall be issued under the authority of His Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the Commander-in-Chief may from time to time order in that behalf.

(3.) A route purporting to be issued and signed as required by this section shall be evidence until the contrary is proved of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the officer or soldier producing the same to demand billets in accordance with such route.

NOTE.

See, generally, as to billeting and routes, Ch. IX, paras. 114–128.

Sub-section (1). *Constable*, see s. 120, and note, and s. 190 (38).

Sub-section (3). This sub-section provides that a route shall so to speak, prove itself, *i.e.*, that it is not to be questioned except on evidence produced to show that it has not been duly issued or signed.

The necessary modifications in the application of this section to the militia, yeomanry, and volunteers are provided in s. 181 (3) (4).

104. (1.) The provisions of this part of this Act with respect to victualling houses shall extend to all inns, hotels, livery stables, or alehouses, also to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail; and the occupier of a victualling house, inn, hotel, livery stable, alehouse, or any such house as aforesaid shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house." Liability to provide billets.

(2.) Provided that an officer or soldier shall not be billeted—

(*a.*) In any private house; nor

(*b.*) In any canteen held or occupied under the authority of a Secretary of State; nor

(*c.*) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licences for the sale of any intoxicating liquor; nor

(*d.*) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tippling in such house; nor

(*e.*) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and strong waters, so as such shopkeeper does not permit tippling in such house; nor

(*f.*) In a house of a person licensed only to sell beer or cider not to be consumed on the premises; nor

(*g.*) In the house of residence of any foreign consul duly accredited as such.

105. (1.) All officers and soldiers of His Majesty's regular forces; and Officers, soldiers, and horses entitled to be billeted.

(2.) All horses belonging to His Majesty's regular forces; and

(3.) All horses belonging to the officers of such forces for which forage is for the time being allowed by His Majesty's regulations,

shall be entitled to be billeted.

NOTE.

The men and horses of the militia, yeomanry, and volunteers are, when these forces are subject to military law, entitled to be billeted by virtue of s. 181 (3) (4).

106. (1.) The keeper of a victualling house upon whom any officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house, and furnish there the accom- Accommodation and payment on billet.

Part III. ss. 106–107.

modation following: that is to say, lodging and attendance for the officer; and lodging, attendance, and food for the soldier; and stable room and forage for the horse, in accordance with the provisions of the Second Schedule to this Act.

(2.) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise, to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighbourhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable issuing the billets, he shall be relieved from providing the same in his victualling house.

(3.) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorised in this behalf by Parliament.

(4.) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at least once in every four days, pay the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command, and his or their horses (if any), have been billeted.

(5.) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named in such account as due to be paid.

NOTE.

Sub-section (1). The details respecting the food and forage to be furnished are contained in the second schedule: the prices to be paid are contained in the annual Act continuing this Act in force.

Sub-section (2). This sub-section shows clearly the obligation of the innkeeper to provide elsewhere accommodation for a soldier or horse billeted on him if he has not got it on his own premises, or if by reason of his house being full or otherwise, he desires to be rid of the liability. The constable is made judge of the sufficiency of the substituted accommodation.

Annual list of keepers of victualling houses liable to billets.

107. (1.) The police authority for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horses who may be billeted on the keeper thereof.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by

being entered in such list, or by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

NOTE.

Sub-section (1). *Police authority.* See definition in s. 190 (39). See also s. 120.

The list merely determines the proportion in which the billets are to be distributed among the keepers of victualling houses, and does not relieve them from their liability to find accommodation for any number for whom quarters are required. *Sharratt* v. *Scotney*, L.R. [1892] 2 Q.B. 479.

Regulations as to grant of billets.

108. The following regulations shall be observed with respect to billeting in pursuance of this Act; that is to say,

(1.) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted:

(2.) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorised by such commanding officer:

(3.) If a keeper of a victualling house feels aggrieved by having an undue proportion of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice may complain to a court of summary jurisdiction, and the justice or court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just:

(4.) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses:

(5.) The regulations with respect to billets contained in the Second Schedule to this Act shall be duly observed by the constable:

(6.) A justice of the peace, on the request of an officer or non-commissioned officer authorised to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route:

(7.) A justice of the peace may require a constable to give an account in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names

Part III. ss. 108–111.

of the keepers of victualling houses on whom such officers, soldiers, and horses are billeted, and the locality of such victualling houses.

NOTE.

Paragraph (3). *Court of summary jurisdiction.* See definition in s. 190 (35).

Offences in relation to Billeting.

Offences by constables.

109. If a constable commits any of the offences following; that is to say,

(1.) Billets any officer, soldier, or horse on any person not liable to billets without the consent of such person; or

(2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a list as liable or from his liability to billets, or from any part of such liability; or

(3.) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted; or

(4.) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted;

he shall, on summary conviction, be liable to a fine of not less than forty shillings, and not exceeding ten pounds.

NOTE.

On summary conviction. See ss. 166–168.

Offences by keepers of victualling houses.

110. If a keeper of a victualling house commits any of the offences following; that is to say,

(1.) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act; or

(2.) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable or from his liability to billets, or any part of such liability; or

(3.) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding five pounds.

NOTE.

On summary conviction. See ss. 166–168.

Offences by officers or soldiers.

111. (1.) If any officer quarters or causes to be billeted any officer, soldier, or horse otherwise than is allowed by this Act upon any person, he shall be guilty of a misdemeanor.

(2.) If any officer or soldier commits any offence in relation to billeting for which he is liable to be punished under Part One

of this Act, other than an offence in respect of which any other remedy is given by this Part of this Act to the person aggrieved he shall, upon summary conviction, be liable to a fine not exceeding fifty pounds.

(3.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

NOTE.

This section punishes with a fine on summary conviction all the offences in relation to billeting which have been made military offences by s. 30, except those for which the injured person can obtain compensation through a court of summary jurisdiction under s. 119.

Impressment of Carriages.

Supply of carriages, &c., for regimental baggage and stores on the march.

112. (1.) Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of His Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or non-commissioned officer authorised by him, and on production of such route, issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant, such carriages, animals, and drivers as are stated to be required for the purpose of moving the regimental baggage and regimental stores of the forces mentioned in the route in accordance with the route; and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose.

(2.) The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this Part of this Act with respect to billeting.

(3.) A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned officer by his commanding officer, shall be a sufficient authority to such officer or non-commissioned officer to demand carriages and animals in pursuance of this Act, and when produced by an officer or non-commissioned officer shall be conclusive evidence to a justice and constable of the authority of the officer or non-commissioned officer producing the same to demand carriages and animals in accordance with such route.

(4.) The warrant ordering carriages, animals, and drivers to be provided shall specify the number and description of the carriages, and also the places from and to which the same are to travel, and the distances between such places.

(5.) When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency.

Part III. — ss. 112–113.

(6.) A fee of one shilling and no more shall be paid for the warrant by the officer or non-commissioned officer applying for the same, and shall be paid to the clerk of the justice.

NOTE.

See, generally, as to impressment of carriages, Ch. IX, paras. 129-134.

Sub-section (1). The same route is in practice used to obtain both billets and carriages.

For the purpose of moving the regimental baggage and stores. Carriages can only be impressed for this purpose, and use of them for any other purpose is penal (s. 31 (5)), except in cases of emergency, which are provided for by s. 115. The term "carriage" has not in this Act the popular meaning of a conveyance for persons only, but means a waggon, cart, or any vehicle suitable for carrying baggage.

Payment for and regulations as to carriages, animals, &c.

113. (1.) There shall be paid in respect of the carriages and animals furnished in pursuance of this Part of this Act the rates specified in the Third Schedule to this Act and the regulations contained in that schedule with respect to the carriages and animals furnished shall be duly observed.

(2.) The following authorities; that is to say,

(*a.*) In England, the court of general or quarter sessions of a county or of a borough subject to the Municipal Corporations Act, 1882; and

45 & 46 Vict. c. 50.

(*b.*) In Scotland, the commissioners of supply of a county or the magistrates of a Royal or Parliamentary burgh; and

(*c.*) In Ireland, the grand jury for a county, a county of a city, a county of a town and city, or a city or town and county, also any council of any such county, town, or city having by law the fiscal powers of a grand jury,

may from time to time, as respects places within their jurisdiction, by order increase the rates authorised in the said schedule by such amount in respect of each rate, not exceeding one third, as may seem reasonable, and the amount of such increase shall be notified in writing by the justice granting a warrant in pursuance of this Act to the person demanding the warrant.

(3.) The order shall specify the average price of hay and oats at the nearest market town at the time of fixing such increased rates, and the order shall not be in force for more than ten days beyond the next meeting of such authority, but may be renewed from time to time by a fresh order or orders, and while in force shall have effect as part of the said schedule.

(4.) A copy of every such order, duly authenticated, shall be transmitted to a Secretary of State within three days after the making thereof.

(5.) The officer or non-commissioned officer who demands carriages or animals in pursuance of this part of this Act shall pay the sums due in respect of the same to the owners or drivers of the

carriages or animals, and one-third part of such payment shall in each case, if required, be made before the carriage is loaded; and such payments shall be made, if required, in the presence of a justice or constable.

(6.) If an officer or non-commissioned officer is from any cause unable to pay the amount due to the owner or driver of any carriage or animal, he shall make up with such owner or driver and sign an account of the amount due to him, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named therein to be paid to such owner or driver.

Annual list of persons liable to supply carriages.

114. (1.) The police authority for any place may cause annually a list to be made out of all persons in such place, or any particular part thereof, liable to furnish carriages and animals under this Act, and of the number and description of the carriages and animals of such persons; and where a list is so made, any justice may by warrant require any constable or constables having authority within such place to give from time to time, on demand by an officer or non-commissioned officer under this Act, orders to furnish carriages and animals, and such warrant shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars as such special warrant.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to furnish any number or description of carriages or animals which he is not liable to furnish, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended, in such manner as the court may think just.

(3.) All orders given by constables for furnishing carriages and animals shall, as far as possible, be made from such list in regular rotation.

NOTE.

Police authority. For definition see s. 190 (39).

Supply of carriages and vessels in case of emergency.

115. (1.) His Majesty by order, distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant by a like order, signified by the Chief Secretary or Under Secretary, may authorise any general or field officer commanding His Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition under this section (hereinafter referred to as a requisition of emergency).

(2.) The officer so authorised may issue a requisition of emergency under his hand, reciting the said order, and requiring justices of

Part III. s. 115.

the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description, and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatever upon any canal or navigable river.

(3.) A justice of the peace, on demand by an officer of the portion of His Majesty's forces mentioned in a requisition of emergency, or by an officer of a Secretary of State authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, and vessels as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition ; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables, or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels as if the expression carriages included vessels.

(4.) A Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of this section, and any difference respecting the amount of payment for any carriage, animal, or vessel shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition.

(5.) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption, shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

(6.) A requisition of emergency, purporting to be issued in pursuance of this section, and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence, until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of His Majesty's forces or of a Secretary of State shall be a sufficient authority to such officer to demand carriages, animals, and vessels in pursuance of this section, and when produced by such officer shall be conclusive evidence to a justice and constable of the authority of such officer to demand carriages, animals, and vessels in accordance with such requisition ; and it shall be lawful to convey on such carriages, animals, and vessels, not only the

baggage, provisions, and military stores of the troops mentioned in the requisition of emergency, but also the officers, soldiers, servants, women, children, and other persons of and belonging to the same.

(7.) Whenever a proclamation ordering the Army Reserve to be called out on permanent service or an order for the embodiment of the militia is in force, the order of His Majesty authorising an officer to issue a requisition of emergency may authorise him to extend such requisition to the provision of carriages, animals, and vessels for the purpose of being purchased, as well as of being hired, on behalf of the Crown.

(8.) Where a justice on demand by an officer and on production of a requisition of emergency, has issued his warrant for the provision of any carriages, animals, or vessels, and any person ordered in pursuance of such warrant to furnish a carriage, animal, or vessel refuses or neglects to furnish the same according to the order, then, if a proclamation ordering the Army Reserve to be called out on permanent service or an order for the embodiment of the militia is in force, the said officer may seize (and if need be by force) the said carriage, animal, or vessel, and may use the same in like manner as if it had been furnished in pursuance of the order, but the said person shall be entitled to payment for the same in like manner as if he had duly furnished the same according to the order.

NOTE.

Carriages and horses of every description and barges and other vessels used in inland navigation may under this section be impressed for any military purposes mentioned in the requisition signed by the general or field officer in command; and may therefore be impressed for the conveyance of persons as well as of baggage. The expression "horses" includes mules and other beasts of burden or draught, s. 190 (10).

Sub-section (4). *County Court Judge.* For definition as respects Scotland and Ireland, see s. 190 (37).

Sub-section (6). The requisition of emergency is made to prove itself, so to speak; see note to s. 103.

Sub-sections (7) and (8) were added by the National Defence Act, 1888 (51 & 52 Vict. c. 31).

Offences in relation to the Impressment of Carriages.

116. Any constable who—

Offences by constables.

(1.) Neglects or refuses to execute any warrant of a justice requiring him to provide carriages, animals, or vessels; or

(2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve any person from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing any carriage, animal, or vessel; or

(3.) Orders any carriage, animal, or vessel to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished;

Part III. shall, on summary conviction, be liable to a fine of not less than twenty shillings nor more than twenty pounds.

ss. 116–119.

NOTE.

On summary conviction. See ss. 166-168.

Offences by persons ordered to furnish carriages, animals, or vessels.

117. A person ordered by any constable in pursuance of this Act to furnish a carriage, animal, or vessel who—

(1.) Refuses or neglects to furnish the same according to the orders of such constable and this Act; or

(2.) Gives or agrees to give to a constable or to any officer or non-commissioned officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any carriage, animal, or vessel in pursuance of this Act; or

(3.) Does any act or thing by which the execution of any warrant or order for providing or furnishing carriages, animals, or vessels is hindered,

shall, on summary conviction, be liable to pay a fine of not less than forty shillings nor more than ten pounds.

NOTE.

On summary conviction. See ss. 166-168.

Offences by officers or soldiers.

118. (1.) Any officer or soldier who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part I of this Act, other than an offence in respect of which any other remedy is given by this Part of this Act to the person aggrieved, shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings.

(2.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

NOTE.

This section punishes with a fine on summary conviction (ss. 166-168) the offences committed by officers and soldiers in respect of impressment of carriages, which are made military offences by s. 31, except those for which compensation can be recovered through a court of summary jurisdiction, under s. 119. See also s. 162.

For definition of court of summary jurisdiction, see s. 190 (35).

Supplemental Provisions as to Billeting and Impressment of Carriages.

Application to court of summary jurisdiction respecting sums due to keepers of victualling houses or owners of carriages, &c.

119. (1.) The following persons, that is to say,

(*a.*) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or

(*b.*) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier billeted upon him, or if the owner or driver of any carriage, animal, or vessel furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the place, only after first making due complaint, if practicable, to such commanding officer,

may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the same to a Secretary of State, who shall forthwith cause the amount due to be paid.

(2.) Provided that the Secretary of State, if it appears to him that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just.

NOTE.

This section allows an innkeeper or owner of an impressed carriage aggrieved by the non-payment of a sum due to him, or by ill-treatment on the part of an officer or soldier, on failure to obtain redress from the commanding officer, to apply to a court of summary jurisdiction, who may certify to the Secretary of State the amount which should be paid.

For definition of court of summary jurisdiction, see s. 190 (35).

Provisions as to constables, police authorities, and justices.

120. (1.) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority; and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself, exercise the powers and perform the duties by this Part of this Act vested in or imposed on a constable, and in such case every such person is in this Part of this Act included in the expression "constable."

(2.) A person having or executing any military office or commission in any part of the United Kingdom shall not, directly or indirectly, be concerned, as a justice or constable, in the billeting of or appointing quarters for any officer or soldier or horse of the corps, or part of a corps, under his immediate command, and all warrants, acts, and things made, done and appointed by such person for or concerning the same shall be void.

NOTE.

Sub-section (1). *Police authority.* See definition in s. 190 (39).

The duty of billeting is thrown by this Act on the police, as successors

Part III. to the parish constables who formerly had that duty. In practice, in those places where troops are frequently passing there are officers commonly known as billet masters, who have the management of the billeting.

ss. 120–122.

Fraudulent claim for carriages, animals, &c.

121. If any person—

(1.) Forges or counterfeits any route or requisition of emergency or knowingly produces to a justice or constable any route or requisition of emergency so forged or counterfeited ; or

(2.) Personates or represents himself to be an officer or soldier authorised to demand any billet, or any carriage, animal, or vessel, or to be entitled to be billeted, or to have his horse billeted ; or

(3.) Produces to a justice or constable a route or requisition which he is not authorised to produce, or a document falsely purporting to be a route or requisition,

he shall be liable, on summary conviction, to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds.

NOTE.

On summary conviction. See ss. 166–168.

Part IV.

PART IV.

GENERAL PROVISIONS.

Supplemental Provisions as to Courts-Martial.

Royal warrant required for convening and confirming general courts-martial.

122. (1.) His Majesty may, subject to the provisions of this Act, by any warrant or warrants under His Sign Manual, in such form as His Majesty may from time to time direct, from time to time—

(*a.*) Convene or authorise any qualified officer to convene a general court-martial for the trial under this Act of any person subject to military law ; and

(*b.*) Give a general authority to any qualified officer to convene general courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command ; and

(*c.*) Empower any qualified officer to delegate to any officer under his command not below the degree of field officer, a general authority to convene general courts-martial for the trial, under this Act, of such persons subject to military law, as are for the time being under or within the territorial limits of his command ; and

(*d.*) Reserve for confirmation by His Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial; and

(*e.*) Empower any officer for the time being authorised to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or sentences to any officer under his command not below the degree of field officer; and

(*f.*) Revoke any warrant for the time being in force, or any part of any warrant, leaving the remainder in full force;

Provided that where it appears to His Majesty that in any place out of the United Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorised under this section to be delegated to a field officer.

(2.) The same officer may or may not be appointed convening and confirming officer.

(3.) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to His Majesty may seem meet, and when delegated by any officer empowered in that behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions, and conditions as to such officer may seem fit.

(4.) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the office named, or be extended to the successors in command of an officer.

(5.) Any warrant of His Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act.

(6.) "Qualified officer" for the purposes of this Act, in so far as it relates to convening or confirming the findings and sentences of general courts-martial, means the Commander-in-Chief and any officer not below the rank of a field officer commanding for the time being any body of the regular forces either within or without His Majesty's dominions; it also includes the Lord Lieutenant of Ireland, the Governor-General of India, and a Governor of any

Part IV. colony on whom the command of any body of regular forces may be conferred by His Majesty.

ss. 122–124.

NOTE.

See ch. V, paras. 19–23 and 91–95.

See forms of Court-Martial Warrants, p. 599 *infra*.

Authority of officer empowered to convene general courts-martial required for convening and confirming district courts-martial.

123. (1.) Any officer or person authorised to convene general courts-martial may—

(*a.*) Convene a district court-martial for the trial under this Act of any person under his command who is subject to military law; and

(*b.*) Empower any person under his command not below the rank of captain to convene a district court-martial for the trial under this Act of any person under the command of such last mentioned officer who is subject to military law; and

(*c.*) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorise to convene district courts-martial to confirm the finding and sentence of any district court-martial.

(2.) The same officer may or may not be appointed convening and confirming officer under this section.

(3.) The power of convening, and of confirming the findings and sentences of, district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet.

(4.) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer.

NOTE.

Sub-section 1 (*b*) and (*c*). Under A.O. of 6th January, 1905, general officers commanding-in-chief are to delegate the power of convening and confirming district courts-martial to such officers as they think advisable, not below the rank of colonel.

Right of person tried to copy of proceedings of court-martial.

124. Any person tried by a court-martial shall be entitled, on demand, at any time in the case of a general court-martial within seven years, and in the case of any other court-martial within three years after the confirmation of the finding and sentence of the court, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, upon payment for the same at the prescribed rate, not exceeding twopence for

every folio of seventy-two words, and for the purposes of this section the proceedings of courts-martial shall be preserved in the prescribed manner.

NOTE.

Prescribed rate. See Rule 99. If an application is made for a copy of part only of the proceedings, it should be complied with.

Prescribed manner. See Rule 98, and K.R. para. 1925.

Summoning and privilege of witnesses at courts-martial.

125. (1.) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.

(2.) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest as he would have if he were a witness before a superior court of civil jurisdiction.

NOTE.

Prescribed manner. See Rule 78.

Privilege from arrest. This privilege is from arrest on civil process, as, *e.g.*, for debt, while going to the place of trial, attending there, and returning home, or as it is expressed, *eundo*, *morando*, *redeundo*. There is no privilege from arrest on any criminal process, as *e.g.*, on a charge for a crime. The courts are disposed to be liberal in determining what is reasonable time for going, staying, or returning; thus, a witness in a cause tried on Friday and arrested on Saturday evening when entering the coach to return home was held to be improperly arrested. The remedy for an improper arrest is to apply to the court on whose process the arrest took place, or to apply for a *habeas corpus*.

Misconduct of civilian at court-martial.

126. (1.) Where any person who is not subject to military law commits any of the following offences; that is to say,

(*a.*) On being duly summoned as a witness before a court-martial, and after payment or tender of the reasonable expenses of his attendance, makes default in attending; or

(*b.*) Being in attendance as a witness—

(i.) Refuses to take an oath legally required by a court-martial to be taken; or

(ii.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or

(iii.) Refuses to answer any question to which a court-martial may legally require an answer,

the president of the court-martial may certify the offence of such person under his hand to any court of law in the part of His Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that

Part IV. ss. 126–127.

may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

(2.) Where a person not subject to military law when examined on oath or solemn declaration before a court-martial wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury, or the offence by whatever name called in the part of His Majesty's dominions in which the offence is tried which, if committed in England, would be perjury.

(3.) Where a person not subject to military law is guilty of any contempt towards a court-martial, by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify the offence of such person, under his hand, to any court of law in the part of His Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of such person in like manner as if he had been guilty of contempt of that court.

NOTE.

Sub-section (3). The object of this sub-section is to enable courts-martial to obtain the punishment of civilians guilty of contempt of court. Usually exclusion from the court will be the best mode of dealing with the case; care being taken not to use any unnecessary force. If it is requisite to apply to a court, the application should be made in England or Ireland to the High Court of Justice; and in Scotland to the Court of Session.

The certificate need not be in any particular form, but should be addressed to the court to which the certificate is to be sent, and should state the name, address, and description of the person who has committed the offence, and the offence which he has committed. It will usually be desirable to make a formal application to the court to act upon the certificate.

A civilian witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom.

Court-martial governed by English law only.

127. A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any legislature whatsoever other than the Parliament of the United Kingdom.

NOTE.

A soldier, wherever he goes, carries with him the military law of his country, that is to say, the Army Act. The Indian Evidence Act, 1872, enacted

that the law of evidence of that country should apply to courts-martial, and by inadvertence this was made apparently to apply to British courts-martial, consequently it was thought necessary to reverse the Indian enactment.

Rules of evidence to be the same as in civil courts.

128. The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts in England; and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court.

NOTE.

Practically this section is merely a declaration of the law, as even without it, military courts would be bound to follow the rules of evidence in civil courts. As to evidence generally, see ch. VI, and Rules 73–86.

The Criminal Evidence Act, 1898, has been applied to courts-martial. See Rule 73 (B).

Position of counsel at courts-martial.

129. Whereas it is expedient to make provision respecting the conduct of counsel when appearing on behalf of the prosecution or defence at courts-martial in pursuance of rules under this Act, be it therefore enacted as follows:—

(1.) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before His Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court-martial; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.

(2.) Where a counsel is guilty of conduct liable to censure, or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

(3.) A court-martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the above-mentioned section.

NOTE.

See as to counsel, Rules 88 to 94.

Sub-section (3). The removal of a counsel from the court could only become requisite under very grave circumstances.

Provision in case of insane persons.

130. (1.) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity unfit to take his trial, the court shall find specially that

Part IV. ss. 130–131.

fact; and such person shall be kept in custody in the prescribed manner until the directions of His Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

(2.) Where on the trial by court-martial of a person charged with an offence it appears that such person committed the offence, but that he was insane at the time of the commission thereof, the court shall find specially the fact of his insanity, and such person shall be kept in custody in the prescribed manner until the directions of His Majesty thereon are known.

(3.) In either of the above cases His Majesty may give orders for the safe custody of such person during his pleasure in such place and in such manner as His Majesty thinks fit.

(4.) A finding under this section shall be subject to confirmation in like manner as any other finding.

(5.) If a person imprisoned or undergoing detention by virtue of this Act becomes insane, then, without prejudice to any other provision for dealing with such insane person, a Secretary of State in any case, and in the case of a person confined in India the Governor-General of India, or the Governor of any presidency in which the person is confined, and in the case of a person confined in a colony the Governor of that colony, may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such person to an asylum or other proper place for the reception of insane persons in the United Kingdom, India, or the colony, according as the person is confined in the United Kingdom, India, or the colony, there to remain for the unexpired term of his imprisonment or detention, and upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison or detention barrack in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment.

NOTE.

This section provides for dealing with insane persons who stand charged with offences, and with prisoners who become insane. Similar provisions are contained in ss. 68, 80 of the Naval Discipline Act (29 & 30 Vict. c. 109).

As to insanity in connection with responsibility for crime, see ch. VIII, para. 9.

Sub-section (2). *Prescribed.* See Rule 57 (C) and note.

Sub-section (5). *Imprisoned or undergoing detention by virtue of this Act.* This refers only to persons under sentence, and not to persons in custody awaiting trial.

So much of this sub-section as relates to a person imprisoned in England is repealed by the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64, s. 17).

General Provisions as to Prisons and Detention Barracks.

Arrangements with Indian and colonial governments as to prisons.

131. (1.) A Secretary of State may from time to time make arrangements with the Governor-General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act, and of deserters or absentees without leave from His Majesty's service, on payment of such sums

as are provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters, and absentees without leave :

(2.) Provided that where a person has been sentenced in India or in a colony to a term of imprisonment or detention exceeding twelve months, or to a term of penal servitude, he shall be transferred as soon as practicable to a prison or detention barrack or convict establishment within the United Kingdom, unless in the case of imprisonment or detention the court shall for special reasons otherwise order, there to undergo his sentence, or unless he belongs to a class with respect to which a Secretary of State has declared that, by reason of the climate or place of his birth or the place of his enlistment, or otherwise, it is not beneficial to the person to transfer him to the United Kingdom; every such declaration shall be laid before both Houses of Parliament.

(3.) Any order which can be made under this section by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence, may be made by the authority commuting or remitting the sentence.

NOTE.

Under s. 60 an offender sentenced to pena servitude in India or a colony must be sent to a penal servitude prison as soon as practicable, to undergo his sentence, and under this section, that prison must be in the United Kingdom, unless he belongs to a class to which a declaration of the Secretary of State, made under this section, is applicable. An offender sentenced in India or a colony to imprisonment or detention must also, if the term of his sentence exceeds twelve months, be sent home to undergo his sentence, unless he belongs to such class as aforesaid, or unless the court which tried him, or the authority confirming or commuting or remitting the sentence, for special reasons otherwise order.

Under this section the Secretary of State made general regulations dated October, 1881, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of penal servitude or imprisonment. These regulations now apply also to persons under sentences of detention: See A.O. 132 of 1907.

(1.) By reason of climate:—

a. Asiatics and Africans.

b. Other persons of colour.

(2.) By reason of place of birth:—

c. Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.

(3.) By reason of place of enlistment:—

d. Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps.

For definitions of India and colony see s. 190 (21), (23). For the purpose of the provisions of the Act relating to the execution of sentences of penal servitude, imprisonment, and detention, the Channel Islands and Isle of Man are deemed to be colonies: Section 187 (2).

Part IV.

ss. 131–133.

Duty of governor of prison to receive prisoners, deserters, and absentees without leave.

132. (1.) The governor of every prison in the United Kingdom, and the governor of every prison in India or a colony who is under the same obligation as the governor of a prison in the United Kingdom, shall receive and confine, until discharged or delivered over in due course of law, all prisoners sent to such prison in pursuance of this Act, and every person delivered into his custody as a deserter or absentee without leave by any person conveying him under legal authority, on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, or from the Governor-General of India, or the Governor of a colony, which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

(2.) Every such governor shall also receive into his custody for a period not exceeding seven days, any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.

(3.) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined.

NOTE.

Sub-section (1). *Same obligation.* See s. 131.

For definitions of India and colony, see s. 190 (21), (23), and as to the Channel Islands and Isle of Man, s. 187 (2).

Sub-section (2). The object of this is to provide for the safe keeping during a halt on the line of march of soldiers in military custody.

Military Prisons and Detention Barracks.

Establishment and regulation of military prisons.

133. (1.) It shall be lawful for a Secretary of State and in India for the Governor-General, to set apart any building or part of a building under the control of the Secretary of State or Governor-General as a military prison or detention barrack, or as a public prison for the imprisonment of military prisoners, and to declare that any such building or part of a building shall be a military prison or a detention barrack, or a public prison, as the case may be, and every military prison so declared shall be deemed to be a public prison within the meaning of the provisions of this Act relating to imprisonment, and if such prison is in India shall be deemed to be an authorised prison.

(2.) It shall be lawful for a Secretary of State, and in India for the Governor-General, from time to time to make, alter, and repeal rules for the government, management, and regulation of military prisons and detention barracks, and for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof, and for the labour

of military or other prisoners and soldiers undergoing detention therein, and for enabling such prisoners or soldiers to earn, by special industry and good conduct, a remission of a portion of their sentence, and for the safe custody of such prisoners or soldiers, and for the maintenance of discipline among them, and for the punishment by personal correction, restraint, or otherwise of offences committed by such prisoners or soldiers, so, however, that such rules shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment or detention more severe than it is under the law in force for the time being in any public prison in England subject to the Prison Act, 1877, and provided that all the regulations made under the Prison Act, 1898, as to the duties of gaolers and medical officers, and all regulations contained in the Coroners' Act, 1887, as to the duties of coroners with respect to inquests in prisons and detention barracks, shall be contained in such rules, so far as the same can be made applicable.

40 & 41 Vict. c. 21. 61 & 62 Vict. c. 41. 50 & 51 Vict. c. 71.

(3.) On all occasions of death by violence or attended with suspicious circumstances in any military prison or detention barrack in India an inquest is to be held, to make inquiry into the cause of death. The commanding officer shall cause notice to be given to the nearest magistrate, duly authorised to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure.

(4.) Where from any cause there is no competent civil authority available, the commanding officer shall convene a court of inquest. Such court shall be convened and shall hold the inquest in such manner as may be prescribed.

(5.) Such rules may apply to such prisons and detention barracks any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

28 & 29 Vict. c. 126.

(6.) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, as soon as practicable after the commencement of the then next session of Parliament.

(7.) In any country in which operations against the enemy are being conducted, the powers of a Secretary of State under this section with respect to military prisons and detention barracks shall be exerciseable by the officer commanding-in-chief in the field, and shall include a power of declaring any place to be a military prison or a detention barrack, and the limitations on the power of making rules as to the punishment of prisoners and soldiers undergoing detention, and as to the severity of imprisonment and detention shall not apply :

Part IV. ss. 133-135.

Provided that nothing in this subsection, or in any rules made thereunder, shall authorize flogging or other corporal punishment to be inflicted for any offence.

NOTE.

Sub-section (1). This section enables a Secretary of State to set apart any building as a military prison or as a detention barrack. The section gives a similar power to the Governor-General of India.

The section also gives power to a Secretary of State to set apart any part of a building under his control as a public prison for the imprisonment of military prisoners. Any part of a building so set apart as a public prison can be declared by the Secretary of State to be a public prison, and necessarily comes under the rules relating to other public prisons.

The powers under this sub-section in respect of prisons are in practice exercised by the Secretary of State for War, and for that purpose the Home Secretary places at the disposal of the War Office, more or less permanently, the whole or some portion of civil prisons.

As military prisoners sentenced to imprisonment are to undergo their sentences either in military custody or in a public prison (see ss. 63 (1) 64 (1), 65 (1)), this section provides that a building declared to be a military prison shall be a public prison, so as to allow such sentences to be undergone in a military prison. As a penal servitude prisoner while in military custody may be confined in an authorised prison (s. 62 (2)), this section declares a military prison in India to be an authorised prison, so as to allow any such military convict to be confined during his intermediate custody in a military prison.

Sub-section (2). The power to provide by the Rules under this sub-section for corporal punishment in military prisons was taken away by the Army (Annual) Act, 1906.

Regulations made under the Prison Act. 1898, *&c.* See Rules 87–113 and 157-175 of the Rules for Convict Prisons, 1899, and s. 3 of the Coroners' Act, 1887 (50 & 51 Vict. c. 71).

Sub-section (4). *Prescribed.* See Rule. 127.

The orders for the interior management of military prisons and detention barracks, &c., are laid down in the Rules for Military Prisons and Detention Barracks. See K.R., para. 645 *et seq.*

Restrictions on confinement in prisons in India or colonies, not being military.

134. No soldier shall be confined longer than is absolutely necessary in prisons other than military prisons in India, and the Colonies, where the rules for the government and management of such prisons differ from those made by the Governor-General of India and a Secretary of State in the case of India and the colonies respectively.

NOTE.

See for definitions of India and colony s. 190 (21), (23), and as to the Channel Islands and Isle of Man see 187 (2).

Classification of prisoners.

135. Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, or sentenced

to be discharged from the service with ignominy, a Secretary of State shall from time to time make rules for the classification and treatment of such prisoners. Part IV. — ss. 135-137.

NOTE.

See K.R., para. 607.

135A. [This section was repealed by s. 9 (2) of the Army (Annual) Act 1907.]

Pay.

Authorised deductions only to be made from pay.

136. The pay of an officer or soldier of His Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or by any Royal Warrant for the time being, or by any law passed by the Governor-General of India in Council.

Penal stoppages from ordinary pay of officers.

137. The following penal deductions may be made from the ordinary pay due to an officer of the regular forces:

(1.) All ordinary pay due to an officer who absents himself without leave, or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been notified as satisfactory by the Commander-in-Chief to a Secretary of State;

(2.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence;

(3.) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay;

(4.) The sum required to make good any loss, damage, or destruction of public property which, after due investigation, appears to the Secretary of State to have been occasioned by any wrongful act or negligence on the part of the officer.

NOTE.

This section states the penal deductions that may be made from the ordinary pay of an officer, and by implication excludes other penal deductions, but it does not prohibit deductions not penal, as, for instance, in respect of rations; see the preamble to the Pay Warrant as to stoppages from pay, &c., to meet public claims, or regimental debts or claims. Anything beyond ordinary pay, being in the nature of a gratuity or reward, is left entirely to the disposal of the Pay Warrant.

The provision contained in paragraph (4) allowing deductions to be made in respect of damage to public property caused wrongfully or negligently by an officer was introduced by the Army (Annual) Act, 1904.

Part IV.

s. 138.

Penal stoppages from ordinary pay of soldiers.

138. The following penal deductions may be made from the ordinary pay due to a soldier of the regular forces :

(1.) All ordinary pay for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a civil court or court-martial, or if he is on board one of His Majesty's ships, by the commanding officer of that ship, for every day of detention or field punishment awarded by a court-martial or by his commanding officer, and for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a civil court or court-martial, or on a charge of absence without leave, for which he is afterwards awarded detention or field punishment by his commanding officer;

(2.) All ordinary pay for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence under this Act committed by him ;

(3.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence, or if he is on board of one of His Majesty's ships, by the commanding officer of that ship, or where he has confessed the offence and his trial is dispensed with by order under section seventy-three of this Act, as may be awarded by that order or by any other order of a competent military authority under that section ;

(4.) The sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer, or, in case he requires to be tried by court-martial, by that court-martial, or if he is on board one of His Majesty's ships, by the commanding officer of that ship ;

(5.) Where a soldier at the time of his enlistment belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment ;

(6.) Where a soldier's liquor ration is stopped by his commanding officer on board any ship, whether commissioned by His

Majesty or not, the sum equivalent to such ration, whether previously drawn by the soldier or not, not exceeding one penny a day for twenty-eight days ;

(7.) The sum required to pay a fine awarded by a court-martial, his commanding officer, or a civil court ; and

(8.) The sum required to pay any sum ordered by a Secretary of State, or any officer deputed by him for the purpose, to be paid as mentioned in this Act for the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child ;

Provided that—

(*a.*) The total amount of deductions from the ordinary pay due to a soldier in respect of the sums required to pay any compensation, fine, or sum awarded or ordered to be paid as aforesaid, shall not exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny a day ; and

(*b.*) a person shall not be subjected in respect of any compensation, fine, or sum awarded or ordered to be paid as aforesaid, to any deductions greater than is sufficient to make good the expenses, loss, damage, or destruction for which such compensation is awarded, or to pay the said sum ; and

(*c.*) where a soldier who is sentenced or ordered in respect of an offence on active service to forfeit all ordinary pay is liable to any other penal deductions from pay, the sentence or order shall apply only to so much of his ordinary pay as remains after those other deductions have been made.

NOTE.

The first paragraph of the note to s. 137 applies to this section also.

Paragraph (1). The Pay Warrant provides that in all the cases, except one, mentioned in this paragraph pay is to be forfeited, and no discretion is given to the commanding officer whether or not to enforce wholly or partially the forfeiture. Absence as a prisoner of war, however, does not cause a forfeiture of pay, unless a Court of Inquiry decide that the soldier was taken prisoner through neglect or misconduct on his own part; and at most only the balance of pay unissued at the date of rejoining is forfeited. See Pay Warrant, 1907, arts. 902-910.

Under s. 140 (2) and the Pay Warrant, absence for less than six hours cannot reckon as a day of absence, unless two conditions are fulfilled, first, that it prevented the absentee from fulfilling a military duty, and second, that the duty was thrown upon some other person. The six hours should be reckoned consecutively, but it is immaterial whether they are partly in one day and partly in another. Thus, a soldier forfeits one day's pay for any period of six hours' continuous absence without leave, and where the absence extends over twelve hours he forfeits one day's pay in respect of any day reckoned from midnight to midnight during any portion of which he was absent. He forfeits a day's pay for any day in which, by reason of his absence,

Part IV. s. 138. however short, a duty that ought to be performed by him is thrown upon some other person.

For example, if a soldier is absent from 9 P.M. on Monday until 4 A.M. on Tuesday, his absence counts as a day's absence, but no more, although the absence was partly on one day and partly on another. If, however, he had returned at 1 A.M., his absence could not count as a day's absence, unless meanwhile he was bound to go on guard or perform some other military duty, and in consequence of his absence some other soldier had to go on guard, or perform that duty.

If a soldier is absent from 6 P.M. on Monday until 6.5 A.M. on Tuesday, his absence is to be reckoned as two days' absence, and it is also to be so reckoned if he returns at 4 A.M. on Tuesday, and at 2 A.M. some other soldier had to go on guard instead of him.

The competent military authority, under s. 73 (1), can order that the soldier shall forfeit his pay for every day in custody on a charge of desertion or fraudulent enlistment when he confesses his guilt and his trial is dispensed with.

Under s. 140 (2), the imprisonment or detention cannot count as a day of imprisonment or detention unless it has lasted at least six hours.

Paragraph (2). This deduction is only authorised where the sickness is caused by an offence of which a soldier has been found guilty and therefore does not extend to sickness caused by immorality or intemperance, when there is no conviction (either by a court-martial or under the award of a commanding officer) for an offence by which the sickness was caused. The medical officer must attend the investigation of the offence, whether before the court-martial or the commanding officer, and give evidence in substantiation of the facts contained in his certificate. The certificate alone is not sufficient. See K.R., para. 504, 505. The Pay Warrant provides that where the deduction is authorised under this paragraph the pay is in every case to be forfeited.

Paragraph (3). As to the statement of the ground for compensation in the charge, see Rule 11 (F) and note, and App. I, Note as to the use of Forms of Charges (23), p. 532, below.

Under paragraphs (3) and (4) a soldier is not liable for the ordinary expenses of his prosecution, capture, or conveyance, or indirect losses of a similar kind. Nor would a soldier be liable under them for damage to a military policeman's clothes, because the policeman fell down and damaged them while in pursuit of the soldier when endeavouring to escape. But where a soldier refused to march, being able to do so, and a cab had to be hired for his conveyance, he was held liable for the expense thus incurred by his contumacy.

Dispensed with by order. As this is limited to an order under s. 73, a commanding officer who of his own authority abstains from sending an accused soldier for trial must dismiss the charge (see s. 46 (1), Rule 4 (A) and note), and therefore cannot in the technical sense exercise any power under this paragraph of ordering any deduction from the soldier's pay.

Paragraph (4). *Buildings or property.* These words are not confined to public buildings, and consequently a soldier may be ordered to pay damages for broken windows or other slight damage done by him. A serious case of this sort is necessarily a case which should not be disposed of by a commanding officer.

Where a soldier has been convicted by court-martial for an offence, his commanding officer cannot subsequently award compensation for damage caused through that offence.

Requires to be tried by court-martial. See s. 46 (8).

Paragraph (7). This paragraph will enable an officer to pay a fine imposed

on a soldier by a civil court, and deduct it from his pay, and thus prevent the soldier from being imprisoned for non-payment of the fine. A court-martial or a commanding officer cannot award a fine except for drunkenness See s. 44 *n.* and note.

Paragraph (8). See s. 145, under which the Secretary of State, or the officer deputed by him for the purpose, can order this deduction, either of his own motion or in accordance with the order of the court.

Proviso (*a*). If a soldier is subjected to a deduction in respect of one matter up to the full amount allowed by this proviso, any deduction subsequently imposed cannot begin to be enforced till the whole sum in respect of which the first deduction was imposed is satisfied. If a soldier under deductions not up to the full amount allowed by this proviso is subjected to a further deduction or deductions, which taken altogether would exceed that amount, the latter deductions must abate in order of priority, so that in no case may the soldier have less than the penny a day.

Proviso (*b*). The court will necessarily take care to find as accurately as possible the amount for which deductions are to be made from a soldier's pay, but as in some cases they will be unable to ascertain the amount accurately, and in others may be mistaken, care will have to be taken in enforcing their sentence not to contravene this proviso. The sentence of the court will not justify any deduction which exceeds the actual loss.

If a soldier is sentenced to stoppages for losing by neglect articles of his clothing or equipments, and these articles are afterwards found and in serviceable condition, he has "made good" the loss. Where two soldiers were convicted of having jointly injured public property, each was held to be rightly sentenced to make good the whole amount of the injury sustained; and in the event of one soldier dying, or otherwise ceasing to be amenable to the award, the whole amount might be legally levied upon the other. Where, however, both remained amenable, the stoppages would be properly divided between them in equal proportions.

The principle is, that stoppages are intended, not for punishment, but to compensate for loss sustained.

Proviso (*c*). As to the power to order forfeiture of pay for offences committed on active service, see s. 44 (6) and s. 46 (2)(*d*). The effect of the proviso is that any forfeiture ordered under those provisions will only take effect on the balance of the soldier's pay which remains after providing for any other penal deductions to which he may be liable at the time.

How deduction of pay may be remitted.

139. Any deduction of pay authorised by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Secretary of State.

Supplemental as to deductions from ordinary pay

140. (1.) Any sum authorised by this Act to be deducted from the ordinary pay of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due to such officer or soldier in such manner, and when deducted or recovered may be appropriated in such manner, as may be from time to time directed by any regulation or order of the Secretary of State.

(2.) And any such regulation or order may from time to time declare what shall be deemed for the purposes of the

Part IV. ss. 140–142.

provisions of this Act relating to deductions from pay to constitute a day of absence or a day of imprisonment or detention, so, however, that no time shall be so reckoned as a day unless the absence or imprisonment or detention has lasted for six hours or upwards, whether wholly in one day or partly in one day and partly in another, or unless such absence prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

(3.) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or soldier, the pay may be withheld until His Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

NOTE.

Sub-section (1). *Sums due.* This will allow the amount to be deducted from prize-money or other sums earned but not paid to an officer or soldier. It would include good conduct pay or deferred pay, but not money lodged in the regimental savings' bank.

Sub-section (2). *Day of absence.* See Pay Warrant, and note to s. 138 (1).

Prohibition of assignment of military pay, pensions, &c.

141. Every assignment of, and every charge on, and every agreement to assign or charge, any deferred pay, or military reward payable to any officer or soldier of any of His Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his widow, child, or other relative, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant for the benefit of the family of the person entitled thereto, or as may be authorised by any Act for the time being in force, be void.

NOTE.

The assignment of pay by an officer or soldier is void by law independently of this enactment. A pension or retiring allowance, on the other hand, would but for this enactment be assignable. See *Lucas v. Harris*, 18 Q.B.D. 127; *Crowe v. Price*, 22 Q.B.D. 429.

Authorised by any Act. This refers to 2 & 3 Vict. c. 51, authorising the assignment, in certain cases, of a pension to guardians of the poor giving relief to the pensioner or his family.

Punishment of false oath and personation.

142. (1.) Where any regulations made by the Secretary of State or the Commissioners of His Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connection with such payment, such oath may be administered and declaration taken by the persons specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

(2.) Any person who falsely represents himself to any military

naval, or civil authority to belong to or to be a particular man in the regular, reserve, or auxiliary forces shall be deemed to be guilty of personation.

(3.) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds. 37 & 38 Vict. c. 36.

(4.) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

NOTE.

If a man personates another with intent to obtain any money or property he is guilty of an offence under the False Personation Act, 1874, and, if convicted at the assizes, is liable to penal servitude for life (see Ch. VII., para. 75). In a very serious case a man might be indicted under that Act; in trivial cases it will be better to prosecute under the present section.

Persons guilty of obtaining pay or pensions by fraudulent means can also be proceeded against, either by indictment or summarily, under the Pension and Yeomanry Pay Act, 1884 (47 & 48 Vict. c. 55), s. 3.

Under this section a man who falsely represents himself to any authority to belong to part of His Majesty's forces, or to be a particular man in any of His Majesty's forces, may be punished, although he does not do it with intent to obtain any money. But it will not be desirable to institute a prosecution in such cases, unless the man has, in fact, obtained some advantage, or has put the authorities to expense and inconvenience. Care must be taken not to prosecute a man for what may be mere idle talk or bravado, without any guilty intention.

In this, as in every other case of an offence punishable by a court of summary jurisdiction, a person who aids and abets the offence is, in England, equally punishable with the principal offender. Consequently, if A personates B, a reserve man, and thereby obtains B's pay, and hands the pay over to B or B's wife, B or B's wife is punishable as aiding and abetting the offence of personation by A.

An army reserve man who commits any offence under sub-sections (2) or (3) in the presence of an officer may, at the discretion of the officer, be ordered into either military or civil custody; and in the latter case will be tried before a court of summary jurisdiction: Reserve Forces Act, s. 6 (3).

Exemptions of Officers and Soldiers.

Exemptions of officers and soldiers from tolls.

143. (1.) All officers and soldiers of His Majesty's regular forces on duty or on the march; and

Their horses and baggage; and

All prisoners under military escort; and

Part IV.
ss.
143-144.

All carriages and horses belonging to His Majesty or employed in his military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same,

shall be exempted from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge, otherwise demandable by virtue of any Act of Parliament already passed or hereafter to be passed, or by virtue of any Act, Ordinance, order or direction of the legislature or other authority in India or any colony :

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels.

(2.) When any soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his soldiers as passengers and shall pay for himself and each soldier one-half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time, and shall in all such cases pay only half the ordinary rate for such boat.

(3.) Any person who demands and receives any duty toll, or rate in contravention of this section shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

NOTE.

Sub-section (1). *Regular forces.* This expression includes the Marines and His Majesty's Indian forces, also the reserve forces when subject to military law: s. 190 (8).

The exemption is not a personal one, but is confined to officers and soldiers when on duty or on the march; thus an officer driving from his private house to barracks would not be entitled to the exemption.

For definition of India and colony, see s. 190 (21), (23).

Sub-section (3). *On summary conviction*, see ss. 166-169.

Exemptions of soldiers in respect of civil process.

144. (1.) A soldier of His Majesty's regular forces shall not be liable to be taken out of His Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them ; that is to say,

(*a.*) On account of a charge of or conviction for crime ; or

(*b.*) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.

(2.) For the purposes of this section a crime shall mean a felony, misdemeanour, or other crime or offence punishable, according to

the law in force in that part of His Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract.

(3.) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate.

(4.) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be sworn, without payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be endorsed upon any process or order issued against a soldier.

(5.) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void; and where complaint is made by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court, or some judge thereof, shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable cost to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

(1.) Any person having cause of action or suit against a soldier of the regular forces may, notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, regimental necessaries, or clothing, of such soldier; and

(2.) This section shall not prevent such proceeding with respect to apprentices and indentured labourers as is authorised by this Act.

NOTE.

The history of this section is given in Clode, Mil. Forc., i 208. It exempts a soldier from appearing in person, though not from being sued, in case of a debt under £30.

As to apprentices and indentured labourers, see ss. 96, 97.

The exemption conferred by this section does not, of course, apply to a soldier required to attend as a witness before a court of law.

Part IV.

s. 145. Liability of soldier to maintain wife and children.

145. (1.) A soldier of the regular forces shall be liable to contribute to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person, pay, arms, ammunition, equipments, instruments, regimental necessaries, or clothing, nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any union, parish, or place.

(2.) When any order or decree is made under any Act or at common law for payment by a man who is or subsequently becomes a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of such order or decree shall be sent to a Secretary of State, or any officer deputed by him for the purpose, and in the case—

(*a.*) Of such order or decree being so sent; or

(*b.*) Of it appearing to the satisfaction of a Secretary of State, or any officer deputed by him for the purpose, that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under fourteen years of age,

Secretary of State, or officer, shall order a portion not exceeding in respect of a wife or children one shilling, and in respect of a bastard child sixpence of the daily pay of a non-commissioned officer who is not below the rank of serjeant, and not exceeding in respect of a wife or children sixpence, and in respect of a bastard child threepence, of the daily pay of any other soldier, to be deducted from such daily pay, and to be appropriated in liquidation of the sum adjudged to be paid by such order or decree, or towards the maintenance of such wife or children, as the case may be, in such manner as the Secretary of State, or officer, thinks fit.

(3.) Where a proceeding is instituted against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or, if the proceeding is before a court of summary jurisdiction, out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if made against the soldier) sufficient to enable him

to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose; and no process whatever under any Act or at common law in any proceeding in this section mentioned shall be valid against a soldier of the regular forces if served after such soldier is under orders for service beyond the seas.

NOTE.

The King's Regulations, para. 390 (vii), provide for handing over to the parish authority in certain cases a married soldier who on attestation falsely represented himself to be single.

Sub-section (2). The deputy for the purpose of this sub-section is at home, the General Officer Commanding-in-Chief a command, and the Major-General or Brigadier-General in charge of administration, and also the General Officer Commanding the London district, Jersey and Guernsey; in India the General Officer Commanding a command, division or brigade; the General Officers Commanding the Infantry Brigades, and the General Officers Commanding the Royal Artillery, at Gibraltar and Malta; and in the Colonies the General Officer Commanding in each case.

Under the amendments introduced into this sub-section by the Army (Annual) Act, 1904, the amounts which can be compulsorily stopped from the pay of a serjeant or soldier for the maintenance of a wife or legitimate children are now double the amounts which can be stopped in the case of a bastard child.

Sub-section (3). *Court of summary jurisdiction.* See definition in s. 190 (35).

Officers not to be sheriffs or mayors.

146. An officer of the regular forces on the active list within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom.

Provided that nothing in this section shall disqualify any officer for being elected to or being a member of a county council.

NOTE.

It is generally understood that officers on full pay and soldiers are exempt from serving all offices which require the personal discharge of duty, and do not admit of the appointment of a deputy. See ch. XII, para. 8.

Exemption from jury.

147. Every soldier in His Majesty's regular forces shall be exempt from serving on any jury.

NOTE.

See Ch. XII, para. 8.

Court of Requests in India.

148-151. [These sections, relating to the above subject, were repealed by s. 6 of the Army (Annual) Act, 1888, and s. 5 of the Army (Annual) Act, 1895.]

Legal Penalties in Matters respecting Forces.

Punishment for pretending to be a deserter.

152. Any person who falsely represents himself to any military, naval, or civil authority to be a deserter from His Majesty's regular forces, shall on summary conviction be sentenced to be

Part IV. imprisoned, with or without hard labour, for any period not exceeding three months.

ss. 152–154.

NOTE.

His Majesty's regular forces. See definition in s. 190 (8).
On summary conviction. See ss. 166-168.

Punishment for inducing soldiers to desert.

153. Any person who in the United Kingdom or elsewhere by any means whatsoever—

(1.) Procures or persuades any soldier to desert, or attempts to procure or persuade any soldier to desert; or

(2.) Knowing that a soldier is about to desert, aids or assists him in deserting; or

(3.) Knowing any soldier to be a deserter, conceals such soldier, or aids or assists him in concealing himself, or aids or assists in his rescue,

shall be liable on summary conviction to be imprisoned, with or without hard labour, for a term not exceeding six months.

NOTE.

(1) If this offence is committed by a person subject to military law, it can be dealt with under s. 12.
On summary conviction. See ss. 166-168.

Apprehension of deserters.

154. With respect to deserters the following provisions shall have effect:

(1.) Upon reasonable suspicion that a person is a deserter, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction:

(2.) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter is or is reasonably suspected to be within his jurisdiction, issue a warrant authorising such deserter to be apprehended and brought forthwith before a court of summary jurisdiction:

(3.) Where a person is brought before a court of summary jurisdiction charged with being a deserter under this Act, such court may deal with the case in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence:

(4.) The court, if satisfied either by evidence on oath or by the confession of such person that he is a deserter shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody, in such manner as the court may deem most expedient, or, until he can be so delivered, to

be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody :

(5.) Where the person confessed himself to be a deserter, and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom, to a Secretary of State, or as he may direct, and if in India to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by a Secretary of State :

(6.) The court may from time to time remand the said person for a period not exceeding eight days in each instance, and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information :

(7.) Where the court causes a person either to be delivered into military custody or to be committed as a deserter, the court shall send, if in the United Kingdom to a Secretary of State, or as he may direct, and if in India or a colony to the general or other officer commanding as aforesaid a descriptive return in relation to such deserter, for which the clerk of the court shall be entitled to a fee of two shillings :

(8.) A Secretary of State shall direct payment of the said fee.

NOTE.

This section provides for the apprehension of suspected deserters by the civil power and for the delivery of deserters into military custody. It will be observed that a court of summary jurisdiction—that is the justices or police magistrates, or in Scotland the sheriff, s. 190 (35)—must be satisfied by evidence on oath or by the confession of the person apprehended, that he is a deserter before delivering him to the military authorities.

There is no obligation on the military authority to take over a man committed as a deserter, and in certain circumstances it is their duty not to do so. See K.R., paras. 517–540.

Sub-sections (5) and (7). *Or as he may direct.* These words were added by the Army (Annual) Act, 1898, for the purpose of enabling the Secretary of State to delegate his duties under the section.

For definition of India and colony, see s. 190 (21), (23).

Part IV.

ss. 155–156. Penalty on trafficking in commissions. 34 & 35 Vict. c. 86.

155. Every person (except the Army Purchase Commissioners, and persons acting under their authority by virtue of the Regulation of the Forces Act, 1871) who negotiates, acts as agent for, or otherwise aids or connives at—

(1.) The sale or purchase of any commission in His Majesty's regular forces; or

(2.) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein; or

(3.) Any exchange which is made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which any sum of money or other consideration is given or received,

38 & 39 Vict. c. 16.

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service.

Penalty on purchasing from soldiers regimental necessaries, equipments, stores, &c.

156. (1.) Every person who—

(*a.*) Buys, exchanges, takes in pawn, detains, or receives from a soldier, or any person acting on his behalf, on any pretence whatsoever; or

(*b.*) Solicits or entices any soldier to sell, exchange, pawn, or give away; or

(*c.*) Assists or acts for a soldier in selling, exchanging, pawning, or making away with,

any of the property following; namely, any arms, ammunition, equipments, instruments, regimental necessaries, or clothing, or any military decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, and stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier or his horse, or of any horse employed in His Majesty's service, shall, unless he proves either that he acted in ignorance of the same being such property as aforesaid, or of the person with whom he dealt being or acting for a soldier, or that the same was sold by order of a Secretary of State or some competent military authority, be liable on summary conviction, in the case of the first offence, to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence; and in the case of a second offence, to a fine not less than five pounds and not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months.

(2.) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction,

and if such court have reasonable ground to believe that the property so found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then if such person does not satisfy the court that he came by the property so found lawfully and without any contravention of this Act, he shall be liable on summary conviction to a penalty not exceeding five pounds.

(3.) A person charged with an offence against this section, and the wife or husband of such person, may, if he or she think fit, be sworn and examined as an ordinary witness in the case.

(4.) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a court of summary jurisdiction; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him, together with such property, before a court of summary jurisdiction.

(5.) A court of summary jurisdiction, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods: and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of summary jurisdiction, to be dealt with according to law.

(6.) For the purposes of this section property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in an house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another.

(7.) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description, shall not be deemed to be stores issued as regimental necessaries or otherwise within the meaning of section thirteen of that Act.

38 & 39 Vict. c. 25.

(8.) It shall be lawful for the Governor-General of India or for the legislature of any colony, on the recommendation of the Governor thereof, but not otherwise, by any law or ordinance to reduce a minimum fine under this section to such amount as may to such Governor-General or legislature appear to be better adapted to the pecuniary means of the inhabitants.

Part IV. ss. 156–157.

(9.) Every person who receives, detains, or has in his possession the identity certificate or life certificate of a person entitled to a military pension or to reserve pay or to any bounty as a pledge or security for a debt, or with a view to obtain payment from the pensioner or person entitled to the pay or bounty of a debt due either to himself or to any other person, shall be liable on summary conviction to the like penalty as for an offence under sub-section one of this section, and the certificate shall be deemed to be property within the meaning of this section.

NOTE.

This section applies to natives of India and to the arms, &c., of Indian soldiers.

Sub-section (2). It was held in *Laws* v. *Read*, 63 L.J. Q.B. 683, that the arrest, without warrant, of a person found in possession of stores was lawful, even though the person was charged and convicted of purchasing the stores from a soldier under sub-section (1), and that an action for false imprisonment in such a case would not lie.

Sub-section (3). This sub-section is virtually repealed by the Criminal Evidence Act, 1898, which enables persons charged with offences, and the wives or husbands of such persons, to give evidence subject to certain conditions, and supersedes all existing enactments authorising such persons to give evidence. See Rule 80, and note.

For definition of India, colony, court of summary jurisdiction, and horse, see s. 190 (21), (23), (35), (40).

Sub-section (9). This sub-section, as amended by the Army (Annual) Act, 1904, now applies to any long training bounty certificates which may be held by militiamen or yeomen. (See Army Order 115 of 1901.)

Jurisdiction.

Person not to be tried twice.

157. Where a person subject to military law has been acquitted or convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence.

NOTE.

Where a court is illegally constituted—as, for example, if convened by an officer not authorised to convene it, or if composed of too few members—it is no court at all, and therefore the accused will not really have been tried, and may be tried again.

So also, a finding of conviction if not confirmed is of no validity (s. 54 (6)), and the accused therefore in such a case has not been convicted, and can be tried again. See ch. V, para. 5.

The principle of law is that a man shall not be tried twice in respect of the same offence. It has been laid down that the test question is—Would the evidence produced on the second trial have sufficed to support a conviction on the first. If so, the second trial is illegal and void.

Where a man is retried on the same charges, it is not usual to impose a more severe punishment than that awarded on the first trial, and a confirming officer should exercise his power of remission when confirming the proceedings, if a greater punishment has been awarded on the second trial.

Where on the second trial the charge is for a different offence or the particulars refer to a different set of facts, the second trial is valid, but an offence of which under s. 56 the man could have been convicted on the first trial is not a different offence.

Part IV
s. 158
Liability to military law in respect of status.

158. (1.) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law, in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject:

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment unless his trial commences within three months after he has ceased to be subject to military law; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial.

(2.) Where a person subject to military law is sentenced by court-martial to penal servitude, imprisonment, or detention, this Act shall apply to him during the term of his sentence, notwithstanding that he is discharged or dismissed from His Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, made to undergo detention, and punished accordingly as if he continued to be subject to military law.

NOTE.

This section arises out of the difference between the status of a soldier and the status of a civilian. A soldier, using the term in its larger sense, repeatedly changes his status from soldier to civilian and from civilian to soldier. In the regular forces this change takes place when a soldier is transferred to the reserve, when he comes back from the reserve to the army on being called out for permanent service or for training, and again when he returns to civil life on being released from service or at the end of his training. A militiaman, as a general rule, is for a short time only in every year under military law, and returns again to his civil status in the same year. The volunteers, again, are constantly changing their status, as they are subject to military law when they are acting with the regular forces, and are not subject to that law under other circumstances, except when on actual service.

This section then provides that if a person while subject to military law commits a military offence, he may be punished for that offence, though he may have changed his status before he is tried, but he can be tried only within three months after the military status ceases. An exception is made with respect to mutiny, desertion, and fraudulent enlistment, as these offences may be tried at any time after they have been committed, subject to the restrictions in s. 161. Further exemptions are made by the Reserve Forces Act, 1882, s. 26 (2), and the Militia Act, 1882, s. 43 (2).

The section further enacts that a sentence for a military offence shall not be affected by the offender being discharged or dismissed, or otherwise ceasing to be subject to military law.

An offence has been committed. This includes the case of where an offence has been alleged to have been committed. (See *Marks* v. *Frogley*, L.R. [1898] 1 Q.B. 888.)

Part IV. ss. 158–161.

It has been ruled by a Judge Advocate-General that a militiaman sentenced by his commanding officer to imprisonment during his period of training, can be kept in prison for the whole term of his sentence, although the period of training expires before the expiration of the sentence.

Liability to military law in respect of place of commission of offence.

159. Any person subject to military law who within or without His Majesty's dominions commits any offence for which he is liable to be tried by court-martial, may be tried and punished for such offence at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial.

NOTE.

This section provides that an offender may be tried by court-martial anywhere, so long as he is tried within the jurisdiction of an officer authorised to convene general courts-martial.

Punishment not increased by trial elsewhere than offence committed.

160. No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed.

NOTE.

This enactment seems useless, as any difference in punishment under the Act is not dependent on the place of trial.

Liability to military law in respect of time for trial of offences.

161. A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial; and where a soldier has served continuously in an exemplary manner for not less than three years in any corps of His Majesty's regular forces, he shall not be tried for any such offence of desertion (other than desertion on active service), or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment, all service prior to such enlistment shall be forfeited.

Provided that a Secretary of State may restore all or any part of the service forfeited under this section to any soldier who may perform good or faithful service, or may otherwise be deemed by such Secretary of State to merit such restoration of service.

NOTE.

The effect of this section is that on the expiration of three years from the commission of an offence, the offender is free from being tried or punished under this Act by court-martial, for any offence except mutiny, desertion or fraudulent enlistment. Mutiny may be tried at any time. With regard to desertion and fraudulent enlistment, it is provided that except in the case

of one of the greatest of all military crimes—desertion on active service—he is not to be tried for the offence if he has served continuously in an exemplary manner for three years in a corps of the regular forces. In the case of fraudulent enlistment, inasmuch as he has chosen to quit his old corps and enter into a new contract to serve for a further term of years, he will be held to serve according to that contract and will not reckon any of his prior service; unless the Secretary of State, under the power given by the proviso to the section (which was added by the Army (Annual) Act, 1900), restores the whole or some part of the forfeited service in consideration of good or faithful service or some other meritorious conduct.

In an exemplary manner. This means that the man has had no entry in the regimental conduct sheet for a continuous period of three years, K.R., para. 489.

Active service. For definition, see s. 189.

Adjustment of military and civil law.

162. (1.) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

(2.) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law, when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of His Majesty's service.

(3.) If an officer—

(*a.*) Neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command who is so accused or convicted as aforesaid; or

(*b.*) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of His Majesty's superior courts in the United Kingdom, or in a supreme court in India, be guilty of a misdemeanor.

(4.) A certificate of a conviction of an officer under this section, with the judgment of the court thereon, in such form as may be directed by a Secretary of State, shall be transmitted to such Secretary of State.

(5.) Any offence committed by any such commanding officer out of the United Kingdom shall, for the purpose of the apprehension, trial, and punishment of the offender, be deemed to have been committed within the jurisdiction of His Majesty's High Court of Justice in England; and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England.

(6.) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried in respect of that offence under this Act.

Part IV.

ss. 162–163.

NOTE.

This section, in effect, declares that a person subject to military law is not to be exempted from the civil law by reason of his military status, so that a person acquitted or convicted of an offence by a court-martial may still be tried by a civil court for the same offence, as being an offence against the civil law. Sub-section (1), however, provides in favour of the soldier, that a civil court in awarding punishment for an offence, shall have regard to any military punishment he may already have undergone; while sub-section (6) further declares that where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be tried under military law for that offence.

As to sub-section (2), see s. 144.

Sub-section (5). It will be observed that an offence, though committed out of the United Kingdom, can be tried and punished in England. See also s. 170 (3).

Sub-section (6). If a non-commissioned officer is convicted by a civil court, the case is to be reported to an officer not below the rank of brigadier-general so that he may consider whether it is desirable to recommend the reduction of the offender: K.R., para. 506.

Evidence.

Regulations as to evidence.

163. (1.) The following enactments shall be made with respect to evidence in proceedings under this Act, whether before a civil court or a court-martial; that is to say,

(*a.*) The attestation paper purporting to be signed by a person on his being attested as a soldier, or the declaration purporting to be made by any person upon his re-engagement in any of His Majesty's regular forces, or upon any enrolment in any branch of His Majesty's service, shall be evidence of such person having given the answers to questions which he is therein represented as having given:

The enlistment of a person in His Majesty's service may be proved by the production of a copy of his attestation paper purporting to be certified to be a true copy by the officer having the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper:

(*b.*) A letter, return, or other document respecting the service of any person in or the discharge of any person from any portion of His Majesty's forces, or respecting a person not having served in or belonged to any portion of His Majesty's forces, if purporting to be signed by or on behalf of a Secretary of State, or of the Commissioners of the Admiralty, or by the commanding officer of any portion of His Majesty's forces, or of any of His Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document:

(*c.*) Copies purporting to be printed by a Government printer of King's Regulations, or regulations referred to in section

one hundred and forty-two of this Act, of royal warrants, of army circulars or orders, and of rules made by His Majesty, or a Secretary of State, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars or orders, and rules :

(*d.*) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer, or to be issued, if in the United Kingdom, by His Majesty's Stationery Office, and if in India, by some office under the Governor-General of India or the Governor of any Presidency in India, shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong :

(*e.*) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or orders purporting to be certified to be true copies by the officer therein alleged to be authorised by a Secretary of State or Commander-in-Chief to certify the same shall be admissible in evidence.

* * * * *

[Paragraph (*f*) is repealed by the Reserve Forces Act, 1882, but is re-enacted in substance by s. 24 (2) of that Act for both the army and militia reserve : see p. 628 below.]

(*g.*) Where a record is made in one of the regimental books in pursuance of any Act or of the King's Regulations, or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated :

(*h.*) A copy of any record in one of the said regimental books purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record :

(*i.*) A descriptive return within the meaning of this Act, purporting to be signed by a justice of the peace shall be evidence of the matters therein stated.

(2) For the purposes of this Act the expression "Government printer" means any printer to His Majesty, and in India any Government press.

NOTE.

See generally as to evidence of documents, ch. VI, paras. 30–40.

This section provides for the admissibility in evidence of a variety of documents or copies of documents used in the administration of military law,

Part IV. — ss. 163–165.

but does not make them conclusive evidence; therefore evidence may be given to contradict them.

In the case of such a document, for instance, as a letter respecting the service of a man, great caution is required as regards the identity of the accused with the person named in the document; and if the accused denies that the facts stated in any such document apply to him, independent evidence of identity must be obtained. See Rule 46 (B) and note.

Documents made evidence by this section except those mentioned in sub-section (1) (*c*) and (*d*) can only be received as such when produced by a witness on oath.

(*a.*) *Purporting.* This expression in this and other paragraphs means that if the paper appears to be certified or to be signed as mentioned in the paragraph, it can be accepted without calling a witness to prove that it has been so certified, signed, &c., unless indeed some evidence is given to the contrary. If any evidence is produced casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, &c., to be given by a witness.

(*c.*) Since 1st January, 1888, the regulations formerly notified in Army circulars have been promulgated together with General Orders under the title of Army Orders. The language of this section was modified by the Army (Annual) Act, 1895, so as to make it expressly applicable to Army Orders.

(*g.*) For the purpose of this paragraph it is important that the records in the regimental books should be signed by the proper officer, namely, the officer required by this Act, by the King's Regulations, or by his military duty, to make the record. A record not in the regimental books is not made evidence.

Evidence of civil conviction or acquittal.

164. Whenever any person subject to military law has been tried by any civil court, the clerk of such court, or his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment of the court thereon if he was convicted, and the acquittal if he was acquitted, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence or of the acquittal of the prisoner, as the case may be.

NOTE.

The object of this section is to facilitate the proof of a conviction or acquittal by a civil court.

Evidence of conviction by court-martial.

165. The original proceedings of a court-martial, purporting to be signed by the president thereof and being in the custody of the Judge Advocate-General, or of the officer having the lawful custody thereof, shall be deemed to be of such a public nature as to be admissible in evidence on their mere production from such custody; and any copy purporting to be certified by such Judge Advocate-General or his deputy authorised in that behalf or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence

without proof of the signature of such Judge Advocate-General, deputy, or officer ; and a Secretary of State, upon production of any such proceedings or certified copy, may, by warrant under his hand, authorise the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned.

NOTE.

This section facilitates the proof of transactions of courts-martial, by declaring that the proceedings or certified copies thereof shall be admissible in evidence.

Purporting. See note to s. 163.

Shall be deemed to be of such a public nature, &c. See 14 & 15 Vict. c. 99, s. 14, which makes a certificate of the document by the officer having the custody of it admissible in evidence, and requires the officer to furnish certified copies upon payment of not more than 4*d.* for every folio of 90 words, and enacts a punishment for false copies, and for the forgery of the officer's signature or seal.

A Secretary of State, by warrant under his hand. The object of this is to avoid such difficulties as arose in Lieutenant Allen's case (see ch. viii., paras. 35–37), where there is no doubt that an officer or soldier convicted abroad has been properly convicted, but no proper warrant has been sent home authorising his retention in custody. See s. 172 (4) and note.

Summary and other Legal Proceedings.

Prosecution of offences and recovery and application of fines.

166. (1.) A court of summary jurisdiction having jurisdiction in the place where the offence was committed, or in the place where the offender may for the time being be, shall have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanor, or to be punishable on indictment ; and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on summary conviction, in manner provided by the Summary Jurisdiction Acts.

(2.) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable.

(3.) A court of summary jurisdiction imposing a fine in pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one-half to be paid to the informer.

(4.) Where the maximum fine or imprisonment which a court of summary jurisdiction in England, when sitting in an occasional courthouse, is authorised by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may impose the maximum fine or imprisonment which such court is authorised by law to impose, but if required by either party, shall adjourn the case to the next practicable petty sessional court.

(5.) The court of summary jurisdiction in Ireland, when hearing and determining a case arising under this Act, shall be constituted

Part IV. ss. 166–167.

either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

(6.) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act, if recovered in England, be paid into the Exchequer, and if recovered in Ireland, shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same.

14 & 15 Vict. c. 60.

NOTE.

Sects. 166, 167, and 168 are the sections ordinarily inserted in Acts of Parliament for the recovery of fines and the prosecution of offences before justices of the peace, police magistrates, or in Scotland sheriffs, who are all referred to as courts of summary jurisdiction. See the definition in s. 190 (35).

See also as regards England, the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49); under which a court of summary jurisdiction must when trying a case consist in England, except London, of two justices or of a stipendiary magistrate, and in London, of the Lord Mayor or an alderman in the city, and elsewhere of a metropolitan police magistrate.

Sub-section (4). Under the last-mentioned Act, two justices, if not sitting in a petty sessional courthouse, have only limited powers of fine and imprisonment; and such powers do not extend to imposing the minimum fine or imprisonment fixed in some cases by this Act. In such a case they may, under this subsection, impose the maximum fine or imprisonment which they can impose in ordinary cases, *i.e.*, 20*s.* or 14 days (42 & 43 Vict. c. 49, s. 20 (7)).

Summary proceedings in Scotland.

167. (1.) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered, and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorised by a Secretary of State or the Commander-in-Chief, or of any person authorised by this Act to complain.

(2.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months, and the conviction and warrant may be in the form number three of Schedule K of the Summary Procedure Act, 1864.

27 & 28 Vict. c. 53.

(3.) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the King's and Lord Treasurer's Remembrancer, on behalf of His Majesty.

(4.) It shall be no objection to the competency of a person to

give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person.

(5.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

(6.) All jurisdictions, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace.

(7.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form.

NOTE.

See also the Summary Jurisdiction (Scotland) Act, 1881, 44 & 45 Vict. c. 33.

Summary proceedings in Isle of Man, Channel Islands, India, and the colonies.

168. All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jurisdiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, and any colony in such courts and in such manner as may be from time to time provided therein by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law, or as near thereto as circumstances admit.

NOTE.

For definitions of India and colony see s. 190 (21), (23).

Power of Governor-General of India and legislature of colony as to fines.

169. It shall be lawful for the Governor-General of India, and for the legislature of any colony, to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor-General or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act.

Protection of persons acting under Act.

170. (1.) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof.

(2.) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction

Part IV. of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

ss. 170–172.

(3.) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in one of His Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a supreme court in India, or in any colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian or Colonial court respectively, and in no other court whatsoever.

NOTE.

With respect to actions for damages and other proceedings against officers acting without jurisdiction or in excess of their jurisdiction, see ch. VIII, para. 40. This section prevents any such action or other proceeding being instituted after the expiration of six months from the date of the act or default complained of.

Actions can be brought in courts at home in respect of acts done abroad. See ch. VIII, paras. 56, 57.

See note to para. 102 of ch. VIII as to the modifications introduced into this section by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

Miscellaneous.

Exercise of powers vested in holder of military office.

171. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service, or according to rules made under section seventy of this Act.

NOTE.

The object of this section is to prevent any legal difficulties arising from the usage of the army relating to the delegation of authority by one officer to another. For example, an officer authorised by the commanding officer to tell off offenders can exercise the powers of the commanding officer under sect. 46. Again, a report which is directed by this Act to be made to a general officer or to an officer having power to convene or confirm courts-martial may be addressed to the adjutant or other person to whom such reports are usually addressed. See also Rule 131.

Provisions as to warrants and orders of military authorities.

172. (1.) Where any order is authorised by this Act to be made by the Commander-in-Chief or the Adjutant-General, or by the Commander-in-Chief or Adjutant-General of the forces in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such Commander-in-Chief, Adjutant-General, or general or other officer commanding, and an order, instruction, or letter purporting to be signed by any

officer appearing therein to be so authorised shall be evidence of his being so authorised.

(2.) The foregoing enactment of this section shall extend to any order or directions issued in pursuance of this Act in relation to a military convict or military prisoner or soldier undergoing detention, and any such order or directions shall not be held void by reason of the death or removal from office of the officer signing or ordering the issue of the same, or by reason of any defect in such order or directions, if it be alleged in such order or directions that the convict, or prisoner, or soldier has been convicted, and there is a good and valid conviction to sustain the order or directions.

(3.) An order in any case if issued in the prescribed form shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation.

(4.) Where any military convict, or military prisoner, or soldier undergoing detention, is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict, or prisoner, or soldier, shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict, or prisoner, or soldier was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly.

(5.) Where a military convict, or a military prisoner, or a soldier undergoing detention, or a person who is subject to military law and charged with an offence, is a prisoner or soldier in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner or soldier to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner or soldier in custody and convey him in accordance with the order, and the prisoner or soldier while so kept shall be deemed to be kept in military custody.

NOTE.

Sub-section (1). The object of this sub-section is similar to that of s. 171. It will allow orders of a general or other officer to be signed by the staff officer or adjutant as authorised by the custom of the service, but the confirmation of courts-martial, and warrants or other documents relating to imprisonment or detention or the infliction of any other punishment must be signed by the officer himself.

Sub-sections (2) and (3) are introduced with a view to prevent military proceedings from being rendered void by merely technical objections.

Part IV.

ss. 172–174.

Sub-section (3). *Prescribed.* See Rule 133.

Sub-section (4). This sub-section is introduced for the same object as sub-sections (2) and (3). These sub-sections would probably not meet a case where the order, warrant, or document is issued by a person having no authority to issue it. In such a case it will be advisable to procure a warrant from a Secretary of State under s. 165.

Furlough in case of sickness.

173. If any soldier on furlough is detained by sickness or other casualty rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier if known, and if not, then to a Secretary of State. The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall; but, save as aforesaid, the soldier shall not in respect of the period of such extension of furlough be liable to be treated as a deserter or as absent without leave.

NOTE.

A soldier who makes a false statement to an officer or justice in respect of extension of his furlough may be tried and punished by court-martial: s. 27 (4).

Licences of canteens.

174. (1.) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any licence for the time being required to enable such person to obtain or hold any excise licence for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting such licences; and excise licences may be granted to such person accordingly.

(2.) For the purposes of this section the expression licence includes any licence or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise licence for the sale of any intoxicating liquor.

NOTE.

This section now applies only as regards Ireland, having been repealed as regards England by the Licensing Act, 1902 (2 Edw. 7, c. 28), ss. 33, 34 (2), Sch., and as regards Scotland by the Licensing (Scotland) Act, 1903 (3 Edw. 7, c. 25), s. 110, Sch. xiii. Under the provisions of s. 23 of the Act of 1902 and s. 50 of the Act of 1903 respectively, excise licences for military canteens may be granted in England and Scotland without a justice's licence or certificate to any persons holding canteens under the authority of a Secretary of State.

174A. Notwithstanding anything in the Disorderly Houses Act, 1751, or in the Theatres Act, 1843, where a recreation room is managed or conducted under the authority of a Secretary of State or the Admiralty, it may be used for public dancing, music, or other public entertainment of the like kind or for the public performance of stage plays, without any licence in pursuance of those Acts, or either of them.

s. 174A. Use of recreation rooms without licence.

25 Geo. 2, c. 36.
6 & 7 Vict. c. 68.

NOTE.

The object and effect of this section is to dispense with the necessity for a licence being obtained, where music, dancing, or any other public entertainment is carried on in a recreation room which is managed under the authority of the Secretary of State for War or of the Admiralty.

PART V.

APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS.

Introductory Observations.

Part V of the Act points out the persons who are subject to military law, that is to say, who are liable to be tried and punished by courts-martial for military and in some circumstances for civil offences under the provisions of the Act.

Application of Act to persons as officers or soldiers.

Such persons are of three descriptions: first, the regular forces, that is to say, the British forces, the Indian forces, and the colonial forces; secondly, the auxiliary forces, that is to say, the militia, the yeomanry, and the volunteers; thirdly, persons subject to military law not belonging to either the regular or the auxiliary forces, that is to say, either followers of the regular forces, or persons employed in or with the regular forces when on active service. The regular forces include the Royal Marines when on shore and the reserve forces when called out.

The sections relating to the liability of persons subject to military law divide them as follows: (i) persons subject to military law as officers (s. 175), and (ii) persons subject to military law as soldiers (s. 176). Sections are then added pointing out the modifications which are necessary with respect to the Royal Marines, the Indian forces, and the auxiliary forces, and with respect to certain members of the regular forces, that is to say, warrant officers and non-commissioned officers, and with respect to the reserve; also with respect to persons who, though subject to military law as above stated, belong neither to the regular nor to the auxiliary forces.

The officers of the land forces (commonly called officers of the regular forces) form of course the principal class of persons subject to military law as officers.

Officers of regular forces.

The expression "officer" is defined by s. 190 (4) of the Act to mean an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof; also any person who by virtue of his commission is appointed to any department or corps of any of the said forces; also any person, whether retired or not, who by virtue of his commission, or otherwise, is legally entitled to the style and rank of an officer of any of the said forces.

Every officer, as so defined, is not necessarily subject to military law. By section 175 (1), that law applies to officers of the regular forces on the active list; but officers of the regular forces who are not on the active list are not *as such* subject to military law, though they become so subject if employed on

Part V.

military service under an officer of the regular forces, or if they are members of the permanent staff of the militia, yeomanry, or volunteers.

The meaning of "active list" must be ascertained by reference to the Royal Warrant relating to pay. Under the warrant now in force, service on the active list includes full pay service and half pay service, and full pay service includes:—

(*a.*) Service with a regiment or on the staff;

(*b.*) Service while seconded; and

(*c.*) Service while on the temporary reserve list of the Engineers.

Under the above warrant, "half-pay" applies only to officers who are on the half-pay list in anticipation of future employment in service on the active list. Officers who have retired from the active list are no longer included under the expression "half pay officers," and the pay they receive is termed "retired pay."

Warrant officers.

By s. 190 (4) warrant and other officers holding honorary commissions are declared to be officers within the meaning of the Act, and are consequently amenable to military law as officers.

Officers of marines and of Indian forces.

The expression "regular forces" is defined by s. 190 (8), to include the Royal Marines and His Majesty's Indian forces, and officers in those forces are therefore subject to military law as above mentioned, but with certain modifications made by the Act in their respective cases, the details of which are mentioned in ss. 179 and 180 and notes thereon. The most important are as follows:—

As regards the Marines, the jurisdiction of the Admiralty over them is not interfered with; and when borne on the books of any ship in commission, they are, speaking generally, subject to the laws governing the Navy.

As regards His Majesty's Indian forces, *native* officers, soldiers, and followers of His Majesty's Indian forces are amenable to the Indian Articles of War, though courts-martial for their trial *may* be convened by any officers duly authorised to convene courts-martial under this Act.

Officers of militia, yeomanry, and volunteers.

Next in importance are all yeomanry officers who have received commissions since the 16th August, 1901, and the militia officers; these are at all times subject to military law: s. 175 (3), and the Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 14), s. 1.

Yeomanry officers, if they have not received commissions as such since the 16th August, 1901, and volunteer officers, on the other hand, not belonging to the permanent staff, are only subject to military law when in actual command of men who are subject to military law, or when their corps is called out, or when, with their own consent, they are attached to or doing duty with any body of troops (whether regular or auxiliary) subject to military law, or are ordered on duty by the military authorities, s. 175 (5) (6). The effect of these enactments is shortly, that volunteer officers and those yeomanry officers who are on the old footing are subject to military law whenever the men actually under their command are so subject, or their corps is on actual military service; and also whenever they are doing duty, apart from their corps, with any body of troops (whether regular or auxiliary) who are so subject. See further as to the yeomanry, ch. IX, para. 112A. As to "actual military service," in the case of volunteers, see s. 17 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65), as amended by the Volunteer Act, 1900 (63 & 64 Vict. c. 39).

Reserve officers.

Officers belonging to the Reserve of Officers and officers belonging to the Indian Army Reserve of Officers, are subject to military law only in the circumstances mentioned in paragraphs (10) and (9) respectively of s. 175; see also Pay Warrant, Part 1, Section XII.

Other persons subject to military law as officers.

There remain certain persons who, without being commissioned officers of any branch of His Majesty's service, are nevertheless declared in particular circumstances to become subject to military law as officers, namely:—

(i.) Officers of forces raised out of the United Kingdom and India, and serving under an officer of the regular forces, see s. 175 (4) and note.

(ii.) Officers of strictly colonial forces. See s. 177 and note.

(iii.) Persons who under the orders of a Secretary of State, or of the Governor-General of India, accompany in an official capacity any of His Majesty's troops on active service in any place beyond the seas; with the qualification that such a person, if a native of India amenable to Indian military law, will be subject to that law. See s. 175 (7) and note.

(iv.) Persons accompanying a force on active service, and holding from the commanding officer of the force passes entitling them to be treated as officers. See s. 175 (8) and note.

Soldiers of the regular forces.

All soldiers of the regular forces are, as a matter of course, subject to military law (s. 176 (1)), including in the expression "soldier" warrant officers not having honorary commissions, and non-commissioned officers, s. 190 (5), (6). There are, however, certain special provisions as to the trial and punishment of warrant officers and non-commissioned officers (ss. 182, 183) which must be borne in mind in dealing with the case of any such officer. Here also it must be remembered that the regular forces include, subject to certain modifications, the Royal Marines and His Majesty's Indian forces.

S. 176 (2), coupled with s. 181 (2), obviates, by an express provision, any doubt that could possibly have been raised as to the application of military law to all non-commissioned officers and men of the permanent staff of the militia, yeomanry, and volunteers.

Colonial forces.

Non-commissioned officers and men of forces raised out of the United Kingdom and India, and under the command of an officer of regulars, are also subject to military law as soldiers. S. 176 (3), and note. As to men of colonial forces, see s. 177, and note.

Pensioners.

All pensioners not otherwise subject to military law are made so whenever they are employed in military service under the orders of an officer of the regular forces, and the Act will apply to them as if they were part of the regular forces: ss. 176 (4) and 178, and notes.

Reserve and auxiliary forces.

Beside the regular forces, men of the reserve and auxiliary forces are subject to military law when called out for service; and men in the reserve (like pensioners) also when they are employed in military service under the orders of an officer of the regular forces.

This liability arises partly under the Army Act and partly under the Acts relating to the reserve and auxiliary forces respectively. See ch. IX, para. 91, and ch. XI.

Men in the Army or Militia Reserve Force when called out are subject to military law under the Army Act (see s. 176 (5)), and Reserve Forces Act, 1882, s. 14. As to reservists employed in military service, see Army Act, s. 176 (5) (*d*).

Army and Militia Reserve.

A Militia Reserve man cannot as such be called out in aid of the civil power, and, except on the occasions above mentioned, is not, except so far as he may be a militiaman, subject to military law. An Army Reserve man, on the other hand, is in a modified way at all times subject to military law, inasmuch as he is liable to be tried by a court-martial under s. 6 of the Reserve Forces Act, 1882, for the offences mentioned in that section, which are failure to attend at any place when required, insubordinate behaviour to superior officers, and non-compliance with the regulations for the payment or government of the force.

Part V.

Militiamen.

A militiaman as above mentioned (see ch. XI, para. 46), is liable to a preliminary training; and every part of the militia is liable to be called out for an annual training or to be embodied for actual service. When the corps or other body to which a non-commissioned officer or man belongs is called out for training, or embodied, that non-commissioned officer or man is subject to military law. The individual militiaman is also subject to military law during his preliminary training, or when he is undergoing any other training with a portion of the regular forces or otherwise, or when he is attached to or otherwise acting as part of the regular forces. See s. 176 (6) (which superseded ss. 56 and 57 of the Militia (Voluntary Enlistment) Act, 1875, now repealed), and Militia Act, 1882, ss. 23-27. Also a militiaman who volunteers to serve under s. 2 of the Reserve Forces and Militia Act, 1898, is, whilst so serving, subject to military law.

Yeomanry.

As to the liability of a member of the yeomanry enlisted after the 16th August, 1901, to be called out for an annual training or for actual service, see ch. XI, paras. 47, 48, 58; as to the liability of other yeomen, see ch. IX, para. 112.

A yeoman enlisted after the 16th August, 1901, is subject to military law in the same manner as a militiaman, and is also so subject when serving in aid of the civil power; as to the position of other yeomen, see ch. IX, para. 112.

Volunteers.

When a volunteer corps or part of a volunteer corps is called out into actual military service (see ch. XI, para. 65), every member of that corps or part of a corps is subject to military law. Individual members of the volunteer corps are also subject to military law when they are being trained or exercised with or are attached to or acting with any regular force, or when they are being trained or exercised with any portion of the militia when subject to military law, and when a body of volunteers assemble for the purpose of proceeding to the place where they are to be so trained or exercised they are so subject from the time they fall in for that purpose till the time when they are dismissed on their return from that place. (See *Marks* v. *Frogley* [1898] 1 Q.B. 888.)

A volunteer who is called out for actual military service under s. 2 of the Volunteer Act, 1900, is, during that service, subject to military law.

It is the duty of the commanding officer of a volunteer force, except when the corps is called out, to provide for members of the corps, before entering on any service in which they will become subject to military law, being informed that they will be so subject, and having an opportunity of withdrawing from that service; but the absence of such notice will not exempt the volunteer. See s. 176 (8), which has superseded s. 23 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65), now repealed.

When a volunteer is subjected to military law, he may be punished by dismissal, in the event of his committing any offence triable by a court-martial or by a commanding officer; s. 181 (6).

General provisions respecting application of military law to auxiliary forces.

In the case of the auxiliary forces the distinction between the case of the corps being subject to military law and of individual members being subject to military law is important. In the former case every member of the corps, whether present with the corps or not, is subject to military law, and if absent improperly can be dealt with as a deserter or absentee without leave (see Militia Act, 1882, ss. 23, 24, as to militiamen and yeomen). Wherever the individual members only are subject, absent members are exempt. The reason is obvious, especially in the case of the volunteers. If the corps is called out for actual service under proclamation, anyone who does not attend is a deserter. If, on the other hand, a volunteer corps goes out for a field

day with a portion of the regular forces, it is optional with the members of that corps whether they do or do not attend, but if they attend they must be subject to the same rules and discipline as the forces with which they are serving, and must therefore be subject to military law.

Persons not belonging to His Majesty's forces, but subject to military law as soldiers.

Lastly. When troops are on active service abroad it is absolutely necessary for the sake of military operations and discipline, that civilians who accompany them should be under the control of military officers and tribunals.

Civilians who accompany troops in an official capacity or who have obtained the privilege of a pass from the commanding officer of the force will, as already noticed, be subject to military law as officers. All other civilians, commonly known as followers, who accompany the troops either as sutlers or on other business connected with the forces, or for purposes of business not necessary to the forces, or of pleasure or otherwise, will be subject to military law as soldiers.

The only modification in the application of the Act to persons who do not belong to His Majesty's forces which requires notice here, is that such a person cannot be punished by a commanding officer and cannot be tried by regimental court-martial.

As to the trial and punishment of a person who or whose corps has ceased to be subject to military law since the commission of the offence, see s. 158 and note.

Persons subject to Military Law.

Persons subject to military law as officers.

175. The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified ; that is to say,

(1.) Officers of the regular forces on the active list, within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces, and officers not on such active list who are employed on military service under the orders of an officer of the regular forces who is subject to military law :

(2.) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law :

(3.) Officers of the militia other than members of the permanent staff :

(3A.) Officers of the Territorial Force other than members of the permanent staff :

(4.) All such persons not otherwise subject to militray law as may be serving in the position of officers of any troops or portion of troops raised by order of His Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces :

Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of a colony :

(5.) Officers of the yeomanry, and officers of the volunteers, whenever in actual command of men who are, in pursuance of this Act, subject to military law, or when their corps is on actual military service :

(6.) Any officer of the yeomanry or volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject

Part V. s. 175.

to military law, whether of the regular or auxiliary forces, or, with his own consent, is ordered on duty by the military authorities :

(7.) Every person not otherwise subject to military law who under the general or special orders of a Secretary of State or of the Governor-General of India accompanies in an official capacity equivalent to that of officer any of His Majesty's troops on active service in any place beyond the seas, subject to this qualification, that where such person is a native of India, he shall be subject to Indian military law as an officer :

(8.) Any person, not otherwise subject to military law accompanying a force on active service who shall hold from the commanding officer of such force a pass revocable at the pleasure of such commanding officer entitling such person to be treated on the footing of an officer :

(9.) The persons holding commissions as officers in the Indian Army reserve when such officers are called out in any military capacity.

(10.) Any reserve officer, within the meaning of the Royal Warrant regulating the composition of the reserve of officers, when he is ordered on any duty or service, for which, as reserve officer, he is liable.

NOTE.

Paragraph (3). This now applies to all yeomanry officers commissioned after the 16th August, 1901, who are therefore subject to military law at all times.

Paragraph (4). This is not meant to include strictly colonial forces, but only forces raised at the Imperial expense: see ch. XI, para. 3. See also s. 176 (3) and note. As to strictly colonial forces, see s. 177.

Paragraph (5). It will be observed that officers of the volunteers and those officers of the yeomanry to whom this paragraph continues to apply (*i.e.*, those who received commissions not later than 16th August, 1901), are not subject to military law under this paragraph, except when they are in actual command of men subject to military law (see s. 176 (7) and (8)), or when their corps is on actual military service. Consequently, an officer of volunteers who is not present at a field day at which the volunteers are brigaded with regular troops is not subject to military law, though if he were present with his corps he would be so subject. Such an officer may also be subject to military law under the Acts relating to the yeomanry and volunteers. (See as to yeomanry 44 Geo. 3, c. 54, ss. 22, 23 ; as to volunteers, 26 & 27 Vict. c. 65, s. 17 ; and A.D. and R. (Commencement) Act, 1879, s. 5.)

Paragraphs (7) and (8). These paragraphs make certain persons subject to military law as officers, who would otherwise be subject under s. 176 (10) to trial and punishment as soldiers. The first extends to persons attached to a military expedition by order of the Secretary of State or the Governor-General of India in a diplomatic, scientific, or other official capacity. The second would apply to persons like contractors or newspaper correspondents, who obtain passes from the commanding officer of the force directing them to be treated as officers. It will be observed that an official of the Governor-

General, who is a native of India, will be subject to Indian military law See s. 180 (2).

See s. 184 for special provisions applicable to persons made subject to military law by these paragraphs.

Paragraph (10). This paragraph was added by the Army (Annual) Act, 1904. See Pay Warrant, Part I, Section XII, as to the composition of the Reserve of Officers.

176. The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified; that is to say,

Persons subject to military law as soldiers.

(1.) All soldiers of the regular forces:

(2.) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces who are not otherwise subject to military law:

(3.) All non-commissioned officers and men serving in a force raised by order of His Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces:

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony.

(4.) All pensioners not otherwise subject to military law who are employed in military service under the orders of an officer of the regular forces:

(5.) All non-commissioned officers and men belonging to the army reserve force or the militia reserve force,—

(*a.*) When called out for training and exercise; and

(*b.*) When called out for duty in aid of the civil power; and

(*c.*) When called out on permanent service; * * * and

(*d.*) When employed in military service under the orders of an officer of the regular forces:

(6.) All non-commissioned officers and men in the militia of the United Kingdom,—

(*a.*) During their preliminary training; and

(*b.*) When they or the body of militia to which they belong are being trained or exercised either alone or with any portion of the regular forces or otherwise; and

(*c.*) When attached to or otherwise acting as part of or with any regular forces; and

(*d.*) When embodied:

(6A.) All non-commissioned officers and men belonging to the Territorial Force—

(*a.*) When they are being trained or exercised, either alone or with any portion of the regular forces or otherwise; and

(*b.*) When attached to or otherwise acting as part of or with any regular forces; and

(*c.*) When embodied; and

(*d.*) When called out for actual military service for purposes of defence in pursuance of any agreement.

(7.) All non-commissioned officers and men belonging to the yeomanry force of the United Kingdom,—

(*a.*) When they or their corps are being trained or exercised, either alone or with any portion of regular forces or with any portion of the militia when subject to military law; and

Part V.
s. 176.

(*b.*) When they are attached to or otherwise acting as part of or with any regular forces ; and

(*c.*) When their corps is on actual military service ; and

(*d.*) When serving in aid of the civil power :

(8.) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom,—

(*a.*) When they are being trained or exercised with any portion of the regular forces or with any portion of the militia when subject to military law ; and

(*b.*) When they are attached to or otherwise acting as part of or with any regular forces ; and

(*c.*) When their corps is on actual military service :

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service.

(9.) All persons who are employed by or are in the service of any of His Majesty's troops when employed on active service beyond the seas, and who are not under the former provisions of this Act subject to military law :

(10.) All persons not otherwise subject to military law who are followers of or accompany His Majesty's troops, or any portion thereof, when employed on active service beyond the seas ; subject to this qualification that where any such persons are employed by or are followers of, or accompany any portion of His Majesty's forces consisting partly of His Majesty's Indian forces subject to Indian military law, and such persons are natives of India, they shall be subject to Indian military law.

NOTE.

Paragraph (2). See s. 181 (2).

Otherwise subject, &c. Soldiers posted to the volunteer permanent staff in their territorial regiment would be "otherwise," *i.e.*, as being in the regular forces, subject to military law.

Paragraph (3). This is not intended to include strictly colonial forces, but only forces raised at the Imperial expense, whose maintenance is voted annually by Parliament. It might, however, no doubt extend to a force raised under a Colonial Act, but under the Imperial control. But strictly colonial forces are dealt with by s. 177. See further ch. XI, para. 3.

Paragraph (4). See s. 178. Pensioners who are not from any other cause subject to military law, will only be so subject if they are actually employed in military service under the orders of an officer of the regular forces. A pensioner employed as canteen steward, though wearing no uniform and performing no military duty, has been held to be subject to military law under his paragraph. *Re Flint*, L.R. 15 Q.B.D. 488.

Paragraph (5). As to the power to try by court-martial an Army Reserve man who on two consecutive occasions fails to comply with the regulations respecting pay, or fails to attend at an appointed place, or is insubordinate to a superior officer, or obtains pay by any fraudulent means, or fails to comply with the regulations for the government of the forces, see s. 6 of the Reserve Forces Act, 1882.

Paragraphs (6), (7), and (8). *Being trained or exercised with.* The period during which militiamen and volunteers are subject to military law by reason of their being trained or exercised with troops subject to military law extends from the time when they fall in for the purpose of proceeding to the place to be trained or exercised with such troops till the time when they are dismissed or returning from that place. See *Marks* v. *Frogley* [1898] 1 Q.B. 888.

Paragraph (6). The local militia, if they were to be raised (see ch. IX, paras. 103, 105), would be also subject to military law under the Acts relating to them, and the A. D. and R. (Commencement) Act, 1879, s. 5. As regards the application of the Act to these forces, see ss. 178, 181.

This paragraph (except the provision as to preliminary training) now applies also to all yeomen enlisted after the 16th August, 1901; Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 14), s. 1.

Paragraph (7). This paragraph (except so far as it applies to yeomanry serving in aid of the civil power) now applies only in the case of yeomen enlisted not later than the 16th August, 1901.

As to the provisions of the Yeomanry Acts, making the yeomanry subject to military law, see ch. IX, para. 112. As to the application of the Act to the yeomanry, see ss. 178, 181, and notes.

Paragraph (8). As to the application of the Act to volunteers, see ss. 178, 181, and introductory observations to this part of the Act. As to "actual military service," see the Volunteer Act, 1863 (26 & 27 Vict. c. 65), s. 17.

Informed. This information must be given on each occasion of entering on service, but it may be given by an insertion in the notice for the corps to parade that a person who attends will become subject to military law, and that he is at liberty not to attend.

Paragraphs (9) and (10). See introductory observations to this part of the Act.

See s. 184 for special provisions applicable to persons made subject to military law by paragraph (10).

Persons belonging to colonial forces, and subject to military law as officers or soldiers.

177. Where any force of volunteers, or of militia, or any other force, is raised in India or in a colony, any law of India or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India or the colony; and where any such force is serving with part of His Majesty's regular forces, then so far as the law of India or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the general officer commanding His Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers and men respectively mentioned in the two preceding sections of this Act.

Part V. — ss. 177–179.

NOTE.

For definitions of "India" and "colony," see s. 190 (21), (23).

This section applies to what may be termed strictly colonial forces, that is to say, forces raised on the responsibility of the government of the colony.

So long as such forces are within the colony their discipline can be provided for by the law of the colony. This section removes any doubts as to whether that law would apply to such forces when outside the limits of the colony.

In order to prevent difficulties arising from deficiencies of the colonial law in cases where the colonial forces are serving with the regular forces, the section provides that such deficiencies may be remedied by the application of the Army Act, subject to any modification made by general orders of the general officer commanding the regular forces in question.

Mutual relations of regular forces and auxiliary forces.

178. When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any pensioners, are subject to military law in pursuance of this Act, such officers, non-commissioned officers, men and pensioners shall be subject to this Act in all respects as if they were part of the regular forces, and the provisions of this Act shall be construed as if such officers, non-commissioned officers, men and pensioners were included in the expression "regular forces": Provided that nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man belonging to such auxiliary forces, or of any pensioner.

NOTE.

The effect of this section combined with s. 50 (1), and with the repeal of the provisions of the Militia and Volunteer Acts by which members of those corps are to be tried by their own officers, is to enable regular officers, militia officers, yeomanry officers on the new footing, and also, when subject to military law, yeomanry officers on the old footing and volunteer officers, to sit indiscriminately on courts-martial for the trial of members of the regular forces and members of the auxiliary forces. Rule 20 (B), however, provides that the militia, yeomanry, and volunteers respectively are, if practicable, to be represented on any court-martial trying a militiaman, yeoman, or volunteer. As to removal of doubts respecting command, see s. 71.

Under s. 158 a militiaman, yeoman, or volunteer who has ceased to be subject to military law can, within three months afterwards, be tried by court-martial for an offence committed while he was so subject. See, as regards the qualification of s. 158 in the case of certain offences by militiamen and yeomen, s. 43 (2) of the Militia Act, 1882.

Modification of Act with respect to Royal Marines.

179. In the application of this Act to His Majesty's Royal Marines, the following modifications shall be made:—

(1.) Nothing in this Act shall prejudice any power of the Admiralty to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any greater authority to command the Royal Marines than they have heretofore used; and a general court-martial for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorised by a warrant from the Admiralty

in pursuance of this section, and except that, where such officer or man while subject to this Act is serving beyond the seas with any other portion of the regular forces, and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive), there is not present any officer authorised by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general or other officer, if authorised to convene general courts-martial, may try such officer or man :

(2.) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces :

(3.) Any power in relation to the convening of courts-martial, or of authorising an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act His Majesty may exercise by any warrant or warrants, may be exercised in His Majesty's name by a warrant or warrants from the Admiralty ; and any such warrant may be addressed to any officer to whom any warrant of His Majesty can be addressed :

(4.) Any power vested by this Act in His Majesty in relation to the confirmation of the findings and sentences of courts-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty :

(5.) Without prejudice to any power of confirmation, the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorised under this section to convene the same, or by any officer otherwise authorised under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces :

(6.) Any power vested in His Majesty by this Act in relation to the making of rules, or to any order with respect to pay, or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if the "Admiralty" were substituted for His Majesty, as well as for the Secretary of State :

Part V. s. 179.

(7.) Anything required or authorised by this Act to be done by, to, or before a Secretary of State, the Commander-in-Chief, Adjutant-General, or Judge Advocate-General may, as regards the Royal Marines, be done by, to, or before the Admiralty; and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of State," "Commander-in-Chief," "Adjutant-General," and "Judge Advocate-General," wherever those words occur:

(8.) Anything required or authorised by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere may, as regards the Royal Marines, be done by, to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and if no such appointment is made, by such Commander-in-Chief or general or other officer:

(9.) Anything authorised by this Act to be done by Royal Warrant may be done, as regards the Royal Marines, by warrant of the Admiralty; and the provisions of this Act with respect to Royal Warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act:

(10.) Anything authorised to be done by the deputy of the Judge Advocate-General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty:

(11.) In the provisions of this Act with respect to evidence, the expression "King's Regulations" shall be deemed to include Admiralty Regulations:

(12.) Nothing in the provisions of this Act relating to the term of enlistment, to the conditions of service, to appointment or transfer, to transfer to the reserve, to the re-engagement or prolongation of service, or to forfeiture of service of a soldier of the regular forces, or to the rules or reckoning service for discharge or transfer to the reserve shall apply to the Royal Marines:

Save that if regulations made by a Secretary of State and the Admiralty provide for the transfer of men of the Royal Marines to any other part of His Majesty's regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and subject to those regulations shall become a soldier of the said part of His Majesty's regular forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act:

And save that if any regulations so made provide for the transfer to the Royal Marines of men belonging to any other part of His Majesty's regular forces, a man belonging to such part may, with his consent, be so transferred in accordance with the said regulations, and, subject to those regulations, shall become a man of the Royal Marines in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of the Acts relating to the Royal Marines :

(13.) A marine on his re-engagement shall make a declaration either before a justice of the peace or person having under this Act the same authority as a justice of the peace for the purposes of enlistment, or before a naval officer commanding any ship commissioned by His Majesty, or before the commanding officer of any battalion or detachment of Royal Marines, in the form from time to time directed by the Admiralty :

(14.) A man in the Royal Marines shall, for absence without leave, on conviction of that offence by court-martial, and for fraudulent enlistment, forfeit his service in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines :

(15.) Officers and men of the Royal Marines, during the time that they are borne on the books of any ship commissioned by His Majesty (otherwise than for service on shore), shall be subject to the Naval Discipline Act, and to the laws for the government of officers and seamen in the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried and punished for any offence in the same manner as officers and seamen in the Royal Navy :

29 & 30 Vict. c. 109, as amended by 47 & 48 Vict. c.

Provided that—

(*a.*) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having any relations with any such officer or man of the Royal Marines, or to any such officer or man if found on shore as a deserter or absentee without leave ; and

(*b.*) If any such officers or men of the Royal Marines are employed on land, the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly.

(16.) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by His Majesty commits an offence for which he is not amenable to a

Part V.

s. 179.

naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act:

(17.) The Admiralty may direct that an officer or man of the Royal Marines may be tried under this Act for any offence committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not borne on the books of any ship commissioned by His Majesty:

(18.) Where any officer or man of the Royal Marines is on board any ship commissioned by His Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act to such extent and under such regulations as His Majesty by Order in Council from time to time directs, and so far as he does not so direct as is for the time being directed by Order in Council with respect to the other regular forces:

29 & 30 Vict. c. 109, as amended by 47 & 48 Vict. c. 39.

(19.) Any naval prison within the meaning of the Naval Discipline Act shall be deemed to be included in the definition of a public prison for the purposes of this Act, and the Admiralty shall not have any authority to establish any military prison under this Act:

(20.) In this section the expression "Admiralty" means the Lord High Admiral or the Commissioners for executing the office of the Lord High Admiral for the time being, or any two of them:

(21.) The expression "man of the Royal Marines" includes a non-commissioned officer of the Royal Marines; and also a marine raised or enrolled under the Naval Reserve Act, 1900, or the Naval Forces Act, 1903, when called into actual service and when being trained or exercised.

63 & 64 Vict. c. 52; 3 Edw. 7, c. 6.

NOTE.

As the Admiralty by commission from the Crown exercise the powers of the Crown in relation to the navy, the powers which by this Act are vested in His Majesty in relation to the army are by this section given to the Admiralty.

Paragraph (1). This paragraph prevents an officer of the army from convening a general court-martial for the trial of an officer or man in the marines except under the circumstances here mentioned. The confirmation is provided for by paragraphs (4) and (5).

Paragraphs (3)—(5). These confer on the Admiralty the power of convening and of confirming the findings and sentences of, general courts-martial, and of conferring by warrant on officers the power to convene, and to confirm the findings and sentences of, both general and district courts-martial.

Paragraph (5) provides that, in the absence of any such confirmation by the Admiralty or by an officer holding a warrant from the Admiralty, the finding and sentence of a general or district court-martial on a marine may be confirmed by an officer holding a warrant which enables him to confirm

the findings and sentences of general or district courts-martial, as the case may be, on soldiers of other portions of the regular forces.

Paragraph (12). The formalities in the enlistment of the marines will be those contained in Part II of this Act (see ss. 80, 81), but the term of enlistment, the conditions of service, transfer, and forfeiture of service, will remain under the Acts relating to the marines, 10 & 11 Vict. c. 63; 20 Vict. c. 1.

Paragraph (15), Proviso (*a*). This proviso refers to ss. 154 and 156.

Proviso (*b*). *Employed on land.* This refers to employment for a length of time amounting to an expedition, and does not refer to the mere landing of marines for a temporary purpose.

Paragraph (17). *Offence.* This means an offence punishable under this Act.

Paragraph (21). *And also a marine, &c.* These words were added by the Army (Annual) Act, 1904, in order to make clear the position of marine reservists raised under the Naval Reserve Act, 1900, and marine volunteers enrolled under the Naval Forces Act, 1903.

Modification of Act with respect to His Majesty's Indian forces.

180. (1.) In the application of this Act to His Majesty's forces when serving in India the following modification shall be made :—

A court-martial may take the same proceedings for the punishment of a person not subject to military law who, in any part of India, commits any offence as a witness before a court-martial, or is guilty of a contempt of a court-martial, as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.

(2.) In the application of this Act to His Majesty's Indian forces, the following modifications shall be made :—

(*a*.) Nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers or followers in His Majesty's Indian forces, being natives of India ; and on the trial of all offences committed by any such native officer, soldier, or follower, reference shall be had to the Indian military law for such native officers, soldiers, or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act :

(*b*.) For the purposes of this Act the expression "Indian military law" means the Articles of War or other matters made, enacted, or in force or which may hereafter be made, enacted, or in force under the authority of the Government of India ; and such articles or other matters shall extend to such native officers, soldiers, and followers wherever they are serving :

(*c*.) The Governor-General of India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to His Majesty's Indian forces :

Part V.
s. 180.

(*d.*) An officer belonging to His Majesty's Indian forces who thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, may complain to the officer appointed in that behalf by the Commander-in-Chief of the forces in India, with the approval of the Governor-General, and that officer shall cause his complaint to be inquired into, and thereupon report to the Governor-General in order to receive the further directions of the Governor-General :

[Paragraph (*e*) has been repealed by the Army (Annual) Act, 1907, s. 7.]

(*f.*) The Governor-General of India may reduce any warrant officer not holding an honorary commission to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately previous to his appointment to be a warrant officer :

(*g.*) The provisions of this Act relating to warrant officers not holding honorary commissions shall apply to hospital apprentices in India although not appointed by warrant :

(*h.*) Part II of this Act shall not apply to His Majesty's Indian forces, but persons may be enlisted and attested in India for medical service or for other special service in His Majesty's Indian forces for such periods, by such persons, and in such manner as may be from time to time authorised by the Governor-General of India.

(3.) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment.

NOTE.

Sub-section (1). As an Indian court has not the power which an English court has to punish contempt committed before itself, this sub-section gives the necessary jurisdiction to punish a civilian guilty of contempt of a court-martial.

Sub-section (2). *Natives of India*, see definition in s. 190 (22).

Natives of India are subject to the Indian Articles of War, and the Acts made by the Government of India ; but a court-martial on such natives, although it must accord in every respect with a court convened under the Indian military law, may under this sub-section be convened by an officer authorised to convene a court-martial under this Act. On the other hand, Europeans in the Indian forces are subject to the laws and regulations for the government of the British Army. Half-castes and persons born in India, but of certain degrees of European descent, specified in the Indian Articles of War, are, for the purposes of this Act, Europeans. It will be observed that the Indian Articles of War are by this sub-section expressly extended to the natives of India belonging to the Indian forces in whatever part of the world they are serving.

Sub-section (2) (*d*). See s. 42 and note.

Sub-section (2) (*e*), (*d*), and (*f*) were modified by the Army (Annual) Act, 1895, so as to give effect to the Madras and Bombay Armies Act, 1893. This Act abolished the Madras and Bombay armies as separate commands, and brought all the forces in India under the command of the Commander-in-Chief, to whom were transferred the powers of the Commanders-in-Chief in the two presidencies. The Act of 1893 was explained by the Army (Annual) Act, 1896, which enacted that things which might be done under or in pursuance of s. 1 of the Act of 1893 might be done either within or without the presidencies of Madras and Bombay respectively.

Sub-section (2) (*h*). Under 23 & 24 Vict. c. 100, it is illegal to enlist European forces for service in India only. This sub-section permits Europeans to be enlisted for medical or other special service in manner from time to time provided by the Governor-General.

It will be recollected that under s. 190 (21), "India" includes the territories in India under the dominion of any native prince or princes as well as the territories the government of which is vested in His Majesty.

Modification of Act with respect to auxiliary forces.

181. (1.) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of His Majesty's auxiliary forces, except so far as such person enlists or enrols himself, or attempts to enlist or enrol himself, in the regular forces, or in a force raised in India or a Colony, and except so far as the said provisions may be applied by any other Act.

(2.) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces.

(3.) The provisions of this Act with respect to billeting and impressment of carriages shall apply to His Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification :

(4.) An order issued and signed as a route or an order signed by the officer commanding the unit of the Territorial Force, the battalion of militia, or the battalion or corps of yeomanry, or volunteers, shall be substituted for a route—

(*a.*) In the case of any man of the Territorial Force, or militiaman attending for his preliminary training ; and

(*b.*) In the case of any officer, non-commissioned officer, or man of the Territorial Force or militia assembled for training and exercise at the place in the United Kingdom appointed by His Majesty in that behalf ; and

(*c.*) In the case of any officer, non-commissioned officer, or man of the Territorial Force or militia embodied under an order of His Majesty, who has joined his corps at the place appointed for his assembling ; and

(*d.*) In the case of any officer, non-commissioned officer, or man, of the yeomanry, or volunteers attending at the place at which his corps is required to assemble ;

Part V. and an order to billet such officer, non-commissioned officer, or man, purporting to be signed in manner required by this Act in the case of a route or by the officer commanding an unit of the Territorial Force, a battalion of militia, or a battalion or corps of yeomanry or volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man, of the Territorial Force, militia, yeomanry, or volunteers, shall be a sufficient authority to such officer, non-commissioned officer, or man, to demand billets, and when produced by an officer, non-commissioned officer, or man, to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man, producing the same to demand billets in accordance with the order.

ss. 181–182.

(5.) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold the office of sheriff, mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which he belongs being assembled for annual training at the time of such nomination or election, or during the time of his tenure of office.

(6.) When a member of the volunteers or the Territorial Force, being a non-commissioned officer or private, is subject to military law, dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act.

NOTE.

Sub-section (1). *Except so far as such person enlists.* For the offence of fraudulent enlistment, see s. 13; for that of unauthorised enlistment, see ss. 32, 33, and 99, and ch. XI, para. 55.

Except so far as the said provisions. This refers to the application of the procedure for enlistment to the enlistment of militiamen by the Militia Act, 1882 (45 & 46 Vict. c. 49, s. 9), which now applies also to the enlisting of yeomen.

As to the alterations introduced into this sub-section by the Army (Annual) Act, 1906, see note to s. 13 (1) (*a*).

Sub-section (3). *Billeting and impressment of carriages.* See Part III of the Act.

Sub-section (5). If a sheriff is an officer of the militia at the time when his corps is embodied, he is discharged from performing personally the office of sheriff, and the under-sheriff is to perform the duty (Militia Act, 1882, s. 40).

The seat of a member of Parliament is not vacated by the acceptance of a commission in the militia, yeomanry, or volunteers; and a person in the militia is not liable to any punishment for absence during the time he is going to vote at any election of a member to serve in Parliament, or during the time he is returning from such election. A person in the militia cannot be compelled to serve as a peace officer, or as a parish officer (Militia Act, 1882, ss. 38–41). These provisions as to persons in the militia now apply also to persons in the yeomanry.

Special provisions as to warrant officers.

182. The provisions of this Act shall apply to a warrant officer not holding an honorary commission in like manner as if he were a non-commissioned officer, subject nevertheless (in addition to the

modifications for a non-commissioned officer) to the following modifications :

(1.) He shall not be punished by his commanding officer nor tried by regimental court-martial, nor sentenced by a district court-martial to any punishment not in this section mentioned ; and

(2.) He may be sentenced—

(*a.*) by a district court-martial to such forfeitures, fines, and stoppages as are allowed by this Act, and, either in addition to or in substitution for any such punishment, to be dismissed from the service, * * * * or to be reduced to the bottom or any other place in the list of the rank which he holds, or to be reduced to an inferior class of warrant officer (if any), or to be reduced to a lower grade, or, if he was originally enlisted as a soldier, but not otherwise, to the ranks ; or

(*b.*) by any court-martial having power to try him, other than a district court-martial, to any punishment which, under this section, a district court-martial has power to award, either in addition to or in substitution for any other punishment.

(3.) A warrant officer reduced to the ranks, or remanded to regimental duty in the rank of private, shall not be required to serve in the ranks as a soldier ;

(4.) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain.

NOTE.

Not holding an honorary commission. Warrant officers holding honorary commissions are officers within the meaning of the Act ; s. 190 (4), (5). This section makes the Act apply to warrant officers who do not hold such commissions as if they were non-commissioned officers. Consequently, subject to the modifications in this and the next section, the word "soldier" throughout the Act includes a warrant officer not holding an honorary commission. See s. 190 (6). In this and the next section, the commanding officer is the commanding officer as defined by Rule 129. See K.R., para. 456.

Paragraph (2). A district court-martial can only sentence a warrant officer to the punishments mentioned in para. (*a*) ; but a general or field general court-martial can award any of the punishments so mentioned, either in addition to, or in substitution for, any punishment which they can award under their ordinary powers.

The Army (Annual) Act, 1904, amended 2 (*a*) in two ways, first, by taking away the power to award suspension from rank and pay and allowances, and secondly, by giving power to reduce a warrant officer to a lower grade, although he was not originally enlisted as a soldier.

183. In the application of this Act to a non-commissioned officer, the following modifications shall apply : Special provisions as to non-commissioned officer.

(1.) The obligation on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkenness ;

Part V. s. 183.

(2.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, and on active service the officer commanding-in-chief in the field and any general officer he may appoint, may reduce any non-commissioned officer to any lower grade or to the ranks :

(3.) A non-commissioned officer may, by the sentence of a court-martial, be ordered to forfeit seniority of rank or be reduced to any lower grade or to the ranks, either in addition to or without any other punishment, in respect of an offence :

(4.) A non-commissioned officer sentenced by court-martial to penal servitude, field punishment, imprisonment, or detention, shall be deemed to be reduced to the ranks :

Provided that—

(*a.*) An army schoolmaster shall not be liable to be reduced to the ranks (unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer), but may nevertheless be sentenced by a court-martial to penal servitude, imprisonment, or detention, or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude, imprisonment, or detention, shall be deemed to be dismissed ; but

(*b.*) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, may dismiss an army schoolmaster ;

(*c.*) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert to his permanent grade as a non-commissioned officer, or, if he has no permanent grade above the ranks, to the ranks.

NOTE.

Non-commissioned officer. See definition in s. 190 (5), which includes acting non-commissioned officer.

Paragraph (1). *Obligation.* See s. 46 (3).

Paragraphs (2), (3), and proviso (*c*). Except in India or on active service a non-commissioned officer can only be reduced by the Commander-in-Chief or by sentence of a court-martial; but inasmuch as the word "non-commissioned officer" includes acting non-commissioned officer (see s. 190 (5)), it is provided by proviso (*c*) that a soldier having acting rank only may be ordered by his commanding officer, for an offence or for any other cause, to revert to his permanent grade, or, if he has no permanent grade as non-commissioned officer, to the ranks. As to reduction of non-commissioned officer convicted by the civil power, see K.R., para. 506. As to reduction of a non-commissioned officer removed from an appointment, see K.R., para. 303.

There being now no Commander-in-Chief, paragraph (2) has no effect except in India, or on active service.

When a non-commissioned officer is reduced to the ranks under paragraph (2), the date from which the reduction is to take effect should be specified in the order.

Words were added to paragraph (2) and proviso (*b*) by the Army (Annual) Act of 1899, so as to give effect to the intention of the Madras and Bombay Armies Act, 1893. See note on sub-section 2 (*c*) of s. 180.

Paragraph (3) must be read in conjunction with the King's Regulations, paras. 282, 283, defining what are ranks. Acting rank is a matter to be dealt with entirely by the commanding officer, and not being legally a rank under the King's Regulations is not cognisable in the sentence of a court-martial. Therefore a sentence of reduction from or to acting rank, *e.g.*, from or to the rank of lance-serjeant or lance-corporal, is inoperative. But a lance-corporal, being a non-commissioned officer, loses his acting rank under paragraph (4) upon being sentenced to any of the punishments therein mentioned.

Ordered to forfeit seniority of rank. See note to s. 44*m*.

Paragraph (4). Although under this paragraph a non-commissioned officer sentenced to penal servitude, imprisonment, detention, or field punishment, is, *ipso facto*, reduced to the ranks, it is desirable to specify the reduction in the sentence. See Rules of Procedure, Appendix II, p. 577.

Proviso (*a*). This proviso allows a schoolmaster to be sentenced to penal servitude, imprisonment, or detention, although he cannot be reduced to the ranks unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer. It does not of course prevent the infliction of any less punishment than detention.

Special provisions as to application of Act to persons not belonging to His Majesty's forces.

184. In the application of this Act to persons who do not belong to His Majesty's forces, the following modifications shall be made :—

(1.) Where an offence has been committed by any person subject to military law who does not belong to His Majesty's forces, such person may be tried by any description of court-martial other than a regimental court-martial, convened by an officer authorised to convene such description of court-martial, within the limits of whose command the offender may for the time being be, and may be tried and on conviction dealt with and punished accordingly.

(2.) Any person subject to military law who does not belong to His Majesty's forces shall, for the purposes of this Act relating to offences, be deemed to be under the command of the commanding officer of the corps, or portion of a corps (if any), to which he is attached, and if he is not attached to any corps, or portion of a corps, under the command of any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said general or other officer commanding, but such person shall not be liable to be punished by a commanding officer or by a regimental court-martial.

Provided that a general or other officer commanding shall not place a person under the command of an officer of rank inferior to the official rank of such person if there is present, at the place where such person is, any officer of higher rank under whose command he can be placed.

Part V.

ss. 184–187.

NOTE.

This section provides for the trial by court-martial of a person who does not belong to either the regular or the auxiliary forces, but who is subject to military law under either s. 175 (7) and (8) or s. 176 (10).

Paragraph (2). This paragraph has reference to certain offences, see ss. 7 (4), 14 (2), 15 (3), and also to the investigation by the commanding officer, see ss. 45 and 46; see also s. 49 (field general court-martial), and Rule 129.

Saving Provisions.

Special provision as to prisoners and prisons in Ireland.

185. All jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Ireland be vested in the General Prisons Board, and shall be exercised by that Board in the manner and subject to the regulations in and under which the jurisdiction and powers of that Board are exercised under the General Prisons (Ireland) Act, 1877, and the provisions of this Act with respect to the orders and regulations of the Secretary of State shall apply to the orders and regulations of such Board.

40 & 41 Vict. c. 49.

Saving of Naval Discipline Act, as to forces when on board His Majesty's ships.

186. Nothing in this Act shall affect the application of the Naval Discipline Act, or any Order in Council made thereunder, to any of His Majesty's forces when embarked on board any ship commissioned by His Majesty, and the auxiliary forces shall be deemed to be part of His Majesty's forces within the meaning of that Act.

NOTE.

The provision of the Naval Discipline Act here referred to is s. 88, and is as follows:—

"Her Majesty's land forces when embarked on board any of Her "Majesty's ships shall be subject to the provisions of this Act to such extent "and under such regulations as Her Majesty, by any Order or Orders in "Council, shall at any time or times direct."

As to Order in Council, see p. 605.

Definitions.

Application of Act to Channel Islands and Isle of Man.

187. This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom, subject to the following modifications:

(1.) The provisions of this Act relating to billeting and the impressment of carriages shall not extend to the Channel Islands and the Isle of Man:

(2.) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude, imprisonment, or detention and to prisons and detention barracks, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude, imprisonment, or detention passed in any of those islands shall be deemed to have been passed in a colony:

(3.) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies:

(4.) For the purposes of the provisions of this Act relating to the militia the Isle of Man shall be deemed to be a colony.

NOTE.

Paragraph (2). The effect of this provision is to require soldiers sentenced to penal servitude, imprisonment, or detention in the Channel Islands or Isle of Man to be brought to the United Kingdom under the same circumstances as when they are sentenced in a colony. See section 131 (2).

Paragraph (4). The volunteers in the Isle of Man are subject to the same law as the volunteers in Great Britain. See s. 50 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65).

Application of Act to ships.

188. Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship, any finding and sentence, so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

NOTE.

This section provides for the trial of military offenders on board ship, or for offences committed on board ship. Under it the soldier will carry with him on board ship the military law to which he was subject at the time when he embarked. Consequently an officer holding a warrant to convene courts-martial at the place of such embarkation would be able to convene a court-martial on board ship. On the other hand, if a man is tried on board ship, the sentence can be confirmed and executed at the place of disembarkation, by the officer who would have had authority to confirm it if the court-martial had been convened and the trial held at that place.

As to troops *en route* for the seat of war, see note to s. 189.

As to troops embarked on board His Majesty's ships, see s. 186 and note.

Interpretation of term "on active service."

189. (1.) In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country.

(2.) Where the governor of a colony in which any of His Majesty's forces are serving, or if the forces are serving out of His Majesty's dominions, the general officer commanding such forces, declares at any time or times that, by reason of the imminence of active service, or of the recent existence of active service, it is necessary for the public service that the forces in the colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that

Part V. ss. 189–190.

the period mentioned in any one declaration do not exceed three months from the date thereof.

(3.) If at any time during the said period the governor or general officer for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

(4.) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

(5.) The Secretary of State may, if he thinks fit, annul a declaration or renewal purporting to be made in pursuance of this section, without prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect.

NOTE.

It will be observed that the power given by this section to anticipate, or prolong, as it were, the period of active service is given to the Governor in a colony, and to the General when out of the King's dominions. The declaration of the Governor must be by proclamation in the official gazette, but it does not take effect as regards the forces until the declaration has been published in general orders. On such publication the troops will be deemed to be on active service, although active service, as defined by the Act, has not actually begun or has ended.

For definition of colony, see s. 190 (23).

Sub-section (1). Even before embarkation troops under orders to proceed to the seat of war are attached to, or form part of, a force which is engaged in operations against the enemy, and therefore, under s. 188, can, when on board a transport en route for the seat of war, be considered as on active service.

Interpretation of terms.

190. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; that is to say,

(1.) The expression "Secretary of State" means one of His Majesty's Principal Secretaries of State;

(2.) The expression "Lord Lieutenant of Ireland" includes the lords justices or other chief governor or governors of Ireland;

(3.) The expression "Commander-in-Chief" means the field-marshal or other officer commanding in chief His Majesty's forces for the time being :

(4.) The expression "officer" means an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof ; it also includes a person who, by virtue of his commission, is appointed to any department or corps of His Majesty's forces, or of any arm, branch, or part thereof ; it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's said forces, or of any arm, branch, or part thereof:

Warrant and other officers holding honorary commissions are officers within the meaning of this Act, subject to the exceptions in this Act mentioned :

(5.) The expression "non-commissioned officer" includes an acting non-commissioned officer, and includes an army schoolmaster when not a warrant officer, but save as is in this Act mentioned does not include a warrant officer not holding an honorary commission :

(6.) The expression "soldier" does not include an officer as defined by this Act, but, with the modifications in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer not having an honorary commission and a non-commissioned officer, and every person subject to military law during the time that he is so subject :

(7.) The expression "superior officer" when used in relation to a soldier, includes a warrant officer not holding an honorary commission, and also includes a non-commissioned officer as above defined :

(8.) The expressions "regular forces" and "His Majesty's regular forces" mean officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to His Majesty in any part of the world, including, subject to the modifications in this Act mentioned, the Royal Marines and His Majesty's Indian forces, and the Royal Malta Artillery, and subject to this qualification that when the reserve forces are subject to military law such forces become during the period of their being so subject part of the regular forces :

The expression "reserve forces" means the army reserve force and the militia reserve force :

* * * * *

[Paragraphs (10) and (11) were repealed by the eserve Forces Act, 1882 (45 & 46 Vict. c. 48), and that Act enacted (s. 28) that in the Army Act

Part V. s. 190.

the expressions "army reserve force" and "militia reserve force" should respectively mean the army reserve and militia reserve under the Reserve Forces Act, 1882.]

(12.) The expression "auxiliary forces" means the territorial force, the militia, the yeomanry, and the volunteers:

13.) The expression "militia" includes the general and the local militia:

(14.) The expression "volunteers and volunteer forces" includes the Honourable Artillery Company of London:

(15.) The expression "corps"—

(A) In the case of His Majesty's regular forces –

(i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal Warrant to be a corps for the purpose of this Act, and is a body formed by His Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the regular forces, and in either case with or without the whole or any part of the permanent staff of any of the auxiliary forces not included in such military body; and

(ii.) Means the Royal Marine forces, in this Act referred to as the Royal Marines; and also

(iii.) Means any portion of His Majesty's regular forces, by whatever name called, which is declared by Royal Warrant to be a corps for the purposes of this Act; and also

(iv.) Means any other portion of His Majesty's regular forces employed on any service and not attached to any corps as above defined;

(v.) And any reference in Part II of this Act to a corps of the regular forces shall be deemed to refer to any such military body as is hereinbefore defined to form a corps; and

(B) In the case of His Majesty's auxiliary forces—

(i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal Warrant to be a corps for the purposes of this Act, and is a body formed by His Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the auxiliary forces, and either inclusive or exclusive of the whole or any part of the permanent staff of any part of the auxiliary forces; and

(ii.) Means any other portion of His Majesty's auxiliary

forces employed in any service, and not attached to any corps as above defined :

(16.) The expression "battalion," in the application of this Act to cavalry, artillery, or engineers, shall be construed to mean regiment, brigade, or other body into which His Majesty may have been pleased to divide such cavalry, artillery, or engineers :

(17.) The expression "regimental" means connected with a corps, or with any battalion or other sub-division of a corps :

(18.) The expression "military decoration" means any medal, clasp, good-conduct badge, or decoration :

(19.) The expression "military reward" means any gratuity or annuity for long service or good conduct ; it also includes any good conduct pay or pension and any other military pecuniary reward :

(20.) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates :

(21.) The expression "India" means British India, together with any territories of any native prince or chief under the suzerainty of His Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India ; and the expression "British India" means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India :

(22.) The expression "native of India" means a person triable and punishable under Indian military law as defined by this Act :

(23.) The expression "colony" means any part of His Majesty's dominions exclusive of the British Islands and of British India, and includes Cyprus and any British protectorate, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony :

(24.) The expression "foreign country" means any place which is not situate in the United Kingdom, a colony, or India, as above defined, and is not on the high seas :

(25.) The expression "beyond the seas" means out of the United Kingdom, the Channel Islands, and Isle of Man ; and the expression "station beyond the seas" includes any place where any of His Majesty's forces are serving out of the United Kingdom, the Channel Islands, and Isle of Man :

(26.) The expression "governor-general" in its application to India means the Governor-General of India in Council;

Part V.
s. 190.

(27.) The expression "governor" as respects the presidency of Bengal means the Governor-General of India in Council, and as respects the presidencies of Madras and Bombay means the Governor in Council of the presidency, and in its application to a colony includes the lieutenant-governor or other officer administering the government of the colony :

(28.) The expressions "oath" and "swear," and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath :

(29.) The expression "superior court" in the United Kingdom means His Majesty's High Court of Justice in England, the Court of Session in Scotland, and His Majesty's High Court of Justice at Dublin :

(30.) The expression "supreme court" means, as regards India, any high court or any chief court; and the expression "court of superior jurisdiction," as regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England :

(31.) The expression "civil court" means, with respect to any crime or offence, a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction :

(32.) The expression "prescribed" means prescribed by any rules of procedure made in pursuance of this Act :

(33.) The expression "misdemeanor," as far as regards Scotland, means a crime or offence, and so far as regards India means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court :

'Summary Jurisdiction Acts." 42 & 43 Vict. c. 49.

(34.) The expression "Summary Jurisdiction Acts"—

(*a.*) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879 :

27 & 28 Vict. c. 53.

(*b.*) As regards Scotland means the Summary Procedure Act, 1864, and any Acts amending the same ; and

(*c.*) As regards Ireland, means within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district ; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same :

14 & 15 Vict. c. 93.

"Court of summary jurisdiction."

(35.) The expression "court of summary jurisdiction"—

(*a.*) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879 ; and

(*b.*) As regards Ireland, means any justice or justices of the peace, police magistrate, stipendiary or other magistrate, or officer by whatever name called, to whom jurisdiction is

given by the Summary Jurisdiction Acts or any Acts therein referred to; and

(*c.*) As regards Scotland, means the sheriff or sheriff substitute, or any two justices of the peace sitting in open court, or any magistrate or magistrates to whom jurisdiction is given by the Summary Procedure (Scotland) Act, 1864; and 27 & 28 Vict. c. 53.

(*d.*) As regards India, a colony, the Channel Islands, and Isle of Man, means the court, justices, or magistrates who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable:

(36.) The expression "court of law" includes a court of summary jurisdiction:

(37.) The expression "county court judge" includes—

(*a.*) In the case of Scotland, the sheriff or sheriff substitute; and

(*b.*) In the case of Ireland, the judge of the Civil Bill Court:

(38.) The expression "constable" includes a high constable and a commissioner, inspector, or other officer of police:

(39.) The expression "police authority" means the commissioner, commissioners, justices, watch committee, or other authority having the control of a police force:

(40.) The expression "horse" includes a mule, and the provisions of this Act shall apply to any beast of whatever description used for burden or draught, or for carrying persons, in like manner as if such beast were included in the expression "horse."

NOTE.

(4.) *Officer.* This includes half-pay and every other description of officer, though not subject to military law under s. 175.

(6.) *Soldier.* This expression practically includes all persons subject to military law other than officers.

Modifications. See ss. 182, 183.

(8.) *Regular Forces.* This definition includes the marines. The distinction between the regular and other forces is that, as a rule, the regular forces are liable to serve continuously in any part of the world.

(15.) *Corps.* As the corps is the unit for the purposes of enlistment and some other purposes under the Act, a power is given to His Majesty by warrant to declare any portion of the forces to be a corps for the purposes of the Act, but even in cases where a warrant has not been issued, a portion of the regular or auxiliary forces employed on any service, and not attached to any corps as defined by the Act or such warrant, becomes a corps for the purposes of the Act. See the Warrant now in force (of the 9th April, 1904), and ch. XI, paras. 4–6.

(21.) *India.* It will be observed that "India," for the purposes of the Act, includes the dominions of Indian native princes as well as "British India"—that is to say, all territories and places in H.M.'s dominions governed through the Governor-General of India.

Part V. s. 190.

(23.) *Colony.* India is not treated as a colony for the purposes of the Act.

The reference to a central legislature refers to such a case as Canada, where the Dominion parliament assembled at Ottawa is the central legislature, and the provincial parliaments for the provinces of Quebec, Ontario, &c., are local legislatures. Under the definition, the whole of Canada being under one central legislature will be one colony, and the provinces of Quebec, Ontario, &c., will be parts of that colony, and not separate colonies, for the purposes of the Act. Similarly the whole of the Commonwealth of Australia (see 63 & 64 Vict. c. 12) will now be one colony, and Victoria, New South Wales &c., will no longer be separate colonies for the purposes of the Act.

The Army (Annual) Act, 1904, has extended the meaning of the term "colony" to include a British Protectorate, and forces raised in a British protectorate will thus be subject to the provisions contained in s. 177 of the Act. See also s. 95 (2).

(24.) *Foreign country.* This includes the whole world, with the exception of the United Kingdom, India, and the colonies as above defined.

(25.) *Beyond the seas.* It will be observed that the Channel Islands and the Isle of Man, though for certain purposes treated as colonies (see s. 187), are treated as not being beyond the seas.

(35.) *Court of Summary Jurisdiction.* The expression "summary conviction" is not defined by the Act, but means a conviction by a court of summary jurisdiction as defined by this section, and does not refer to the summary award of punishment by a commanding officer or to any other military proceeding.

By virtue of the definition in the Interpretation Act, 1889 (52 & 53 Vict. c. 63), a "court of summary jurisdiction" means, in England, a police or stipendiary magistrate, and also any justice of the peace, including a mayor, who is *ex officio* a justice; but for hearing a case the court must consist of two justices, or of one police or stipendiary magistrate.

The expression "authorised prison" is not defined by this section, but is defined, as regards military convicts, by s. 62, and as regards military prisoners, by s. 65.

It may be observed that under the Interpretation Act, 1889, in the construction of every Act of Parliament, masculine words include the feminine, the plural includes the singular, and the singular includes the plural; the word "month" means a calendar month, and "oath," "affidavit," and "swear," include affirmation, declaration, and affirm or declare. This enactment, however, does not apply to documents not Acts of Parliament, and therefore in any such document, *e.g.*, a warrant, "oath" will not include affirmation, &c., but under Rule 134 (c) "month" in a sentence of imprisonment, detention, or field punishment, means, unless the contrary is expressed, a calendar month.

Throughout the Act a year means twelve calendar months and may be held to commence on any day in any month.

Part VI.

COMMENCEMENT AND APPLICATION OF ACT AND REPEAL.

Part VI (ss. 191–193) and the Fifth Schedule were repealed by the Statute Law Revision (No. (2)) Act, 1893 (56 & 57 Vict. c. 54).

FIRST SCHEDULE.

s. 96.

Form of Oath to be taken by a Master whose Apprentice has absconded, and of Justice's Certificate annexed.

I, *A.B.*, of do make oath, that I am by trade a , and that was bound to serve as an apprentice to me in the said trade, by indenture dated the day of for the term of years; and that the said did on or about the day of abscond and quit my service without my consent; and that to the best of my knowledge and belief the said is aged about years. Witness my hand at , the day of , 19 .

(Signed) *A.B.*

I hereby certify that the foregoing affidavit was sworn before me at , this day of , 19 .

(Signed) *C.D.*, Justice of the Peace for .

Form of Oath to be taken by a Master whose Indentured Labourer in India or a Colony has absconded, and of Justice's Certificate annexed.

I, , of , do make oath that was bound to me to serve as an indentured labourer by indenture dated the day of for the term of years, and that the said did on or about the day of abscond and quit my service without my consent. Witness my hand at the day of 19 .

(Signed) *A.B.*

I hereby certify, &c. [*as for apprentice*].

ss. 106–108.

SECOND SCHEDULE.

BILLETING.

PART I.

Accommodation to be furnished by Keeper of Victualling House.

A keeper of a victualling house on whom any officer, soldier, or horse is billeted—

(1.) Shall furnish the officer and soldier with lodging and attendance; and

*(2.) Shall, if required by the soldier, furnish him for every day of the march and for not more than two days, if the soldier is halted at an intermediate place on the march for more than two days, and on the day of arrival at the place of final destination, with breakfast, hot dinner, and supper on each day, such meals to consist of such quantities of food and drink as may from time to time be fixed by His Majesty's Regulations, not exceeding—

(*a*) For breakfast, six ounces of bread, one pint of tea with milk and sugar, four ounces of bacon;

(*b*) For hot dinner, one pound of meat previous to being dressed, eight ounces of bread, eight ounces of potatoes or other vegetables, one pint of beer or mineral water of equal value;

(*c*) For supper, six ounces of bread, one pint of tea with milk and sugar, two ounces of cheese; and

*(3.) When the soldier is not so entitled to be furnished with a meal, shall furnish the soldier with candles, vinegar, and salt, and allow him the use of fire, and the necessary utensils for dressing, and eating his meat; and

(4.) Shall furnish stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw on every day for each horse.

† For the purposes of this Part of this Schedule the expression "furnish with lodging" shall include the provision of a separate bed for each officer and soldier.

PART II.

Regulations as to Billets.

(1.) When the troops are on the march the billets given shall, except in case of necessity or of an order of a justice of the peace, be upon victualling houses in or within one mile from the place mentioned in the route (*a*):

(2.) Care shall always be taken that the billets be made out to the less distant victualling houses in which suitable accommodation can be found before billets are made out for the more distant victualling houses:

(3.) Except in case of necessity, where horses are billeted, each man and his horse shall be billeted on the same victualling house:

* This provision was amended by the Army (Annual) Act, 1907.
† This provision was added by the Army (Annual) Act, 1904.

(4.) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number:

(5.) Except in case of necessity, a soldier and his horse shall not be billeted at a greater distance from each other than one hundred yards:

(6.) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved:

(7.) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment:

(8.) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house.

THIRD SCHEDULE.

s. 113.

IMPRESSMENT OF CARRIAGES.

Table of Rates of Payment for Carriages and Animals.

Carriages and Animals.	Rate per Mile.
In Great Britain.	
A waggon with four or more horses, or a wain with six oxen, or four oxen and two horses.	One shilling.
A waggon with narrow wheels, or a cart with four horses, carrying not less than fifteen hundredweight.	Ninepence.
Any other cart or carriage, with less than four horses, and not carrying fifteen hundredweight.	Sixpence.
In Ireland.	
For every hundredweight loaded on any wheeled vehicle.	One halfpenny.

The milcage when reckoned for the purposes of payment shall include the distance from home to the place of starting and the distance home from the place of discharge.

Regulations as to Carriages and Animals.

(1.) Where the whole distance for which a carriage is furnished is under one mile the payment shall be for a full mile.

(2.) In Ireland, the minimum sum payable for a car shall be threepence, and for a dray, sixpence per mile.

(3.) In Great Britain, when the day's march exceeds fifteen miles, the justice granting his warrant may fix a further reasonable compensation for every mile travelled, not exceeding, in respect of each mile, the rate of hire authorised to be charged by this Act; when any such additional compensation is granted, the justice shall insert in his own hand in the warrant the amount thereof.

(4.) In Ireland the payment shall be at the same rate for each hundredweight in excess of the amount which the carriage is liable under this schedule to carry.

(5.) A carriage shall not be required to travel more than twenty-five miles.

(6.) A carriage shall not, except in case of pressing emergency, be required to travel more than one day's march prescribed in the route.

(7.) In Great Britain a carriage shall not be required to carry more than thirty hundredweight.

(8.) In Ireland a carriage shall not be required to carry, if a car, more than six hundredweight, and if a dray more than twelve hundredweight.

(9.) The load for each carriage shall, if required, at the expense of the owner of the carriage, and if the same can be done within a reasonable time without hindrance to His Majesty's service, be weighed before it is placed in the carriage.

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s. 154.

FOURTH SCHEDULE.

Form of Descriptive Return.

Descriptive Return of who* at on the day of , and was committed to confinement at on the day of as a deserter [*or* absentee without leave] from the Bn. of the Regiment of .

* After the word "who," to be inserted either the words "was apprehended," or "surrendered himself," as the case may be.

Age - - - - - - -		
Height - - - - - -	Feet.	Inches.
Complexion - - - - - -		
Hair - - - - - -		
Eyes - - - - - -		
Marks - - - - - -		
In uniform or plain clothes - - - -		
Probable date and place of attestation - -		
Probable date of desertion or beginning of absence, and from what place - - - -		

Name, occupation, and address of the person by whom or through whose means the deserter [*or* absentee without leave] was apprehended and secured.*	
Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner and upon what grounds. The fullest possible details to be given.	

I do hereby certify that the prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he† the before-mentioned corps, and I recommend‡ for a reward of *s.*

——*Signature* } *of committing magistrate.*
——*Residence* }
——*Post Town* }
——*Signature of prisoner.*
——*Signature of informant.*

Or where the prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming:

I hereby certify that the above-named prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence from a Secretary of State.

_____ *Signature.*
_____ *Residence.*
_____ *Post Town.*

* It is important for the public service, and for the interest of the deserter or absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the justice in his own handwriting or, under his direction, by his clerk.

† Insert *is* or *is not a deserter* or *absentee without leave from* or *belongs* or *does not belong to*, as the case may be.

‡ The justice will insert the name of the person to whom the reward is due, and the amount [5*s.*, 10*s.*, 15*s.*, or 20*s.*] which, in his opinion, should be granted in this particular case.

FIFTH SCHEDULE.

Acts Repealed.

[Rep. Stat. Law Rev. (No. (2)) Act, 1893.]

RULES OF PROCEDURE, 1907.

Part I.—ARREST AND TRIAL.

Arrest.

1. Report of delay of trial under Army Act, s. 45.

Power of Commanding Officer.

2. Duty of commanding officer as to investigation of charge for offence.
3. Hearing of charge.
4. Disposal of the charge or adjournment for taking down the summary of evidence.
5. Remand of accused.
6. Summary award of punishment by commanding officer.
7. Right of trial by court-martial in lieu of summary award.
8. Procedure on charge against officer.

Framing Charges.

9. Charge-sheet and charge.
10. Commencement of charge-sheet.
11. Contents of charge.
12. Validity of charge-sheet.

Preparation of Defence by Accused.

13. Opportunity for accused to prepare defence.
14. Information of charge and delivery of summary of evidence and list of officers to accused.
15. Joint trial of accused persons.

Convening of Court-Martial.

16. Convening of regimental court-martial.
17. Procedure of officer on convening court-martial.
18. Adjournment for insufficient number of officers.
19. Ineligibility and disqualification of officers for court-martial.
20. Corps of members of court-martial.
21. Rank of members of court-martial in certain cases.

Procedure at Trial.—Constitution of Court.

22. Inquiry by court as to legal constitution.
23. Inquiry by court as to amenability of accused and validity of charge.

Procedure at Trial.—Challenge and Swearing.

24. Appearance of prosecutor and accused.
25. Proceedings for challenge of members of court.
26. Swearing of members.
27. Swearing of judge-advocate and other officers.
28. Substitution of solemn declaration for oath.
29. Form of oath in case of trial of several accused persons.
30. Swearing of person according to the form of his religion.

Prosecution, Defence, and Summing Up.

31. Arraignment of accused.
32. Objection by accused to charge.
33. Amendment of charge.
34. Special plea to the jurisdiction.
35. General plea of "Guilty" or "Not Guilty."
36. Plea in bar.
37. Procedure after plea of "Guilty."
38. Withdrawal of plea of "Not Guilty."
39. Plea of "Not Guilty" and case for the prosecution.
40. Procedure where no witness to facts (except accused) called.
41. Procedure where witnesses called for defence.
42. Summing-up by judge-advocate.

Finding and Sentence.

43. Consideration of finding.
44. Form and record of finding.
45. Procedure on acquittal.
46. Procedure on conviction.
47. Mode of forfeiting seniority of rank of officer or non-commissioned officer.
48. Sentence.
49. Recommendation to mercy.
50. Signing and transmission of proceedings.

Confirmation and Revision.

51. Procedure of confirming officer.
52. Revision.
53. Promulgation.
54. Mitigation of sentence on partial confirmation.
55. Confirmation of finding on alternative charges.
56. Confirmation notwithstanding informality in or excess of punishment.

Insanity.

57. Provisions as to finding of insanity and custody of insane person.

General Provisions as to Proceedings of Court.

58. Seating of members.
59. Responsibility of president.
60. Power of court over address of prosecutor and accused.
61. Procedure on trial of accused persons together.
62. Separate charge-sheets.
63. Sitting in closed court.
64. Time for trial.
65. Continuity of trial and adjournment of court.
66. Suspension of trial.
67. Proceeding on death or illness of accused.
68. Presence throughout of all members of court.
69. Taking of opinions of members of court.
70. Procedure on incidental question.
71. Swearing of court to try several accused persons.
72. Swearing of interpreter and shorthand writer.

General Provisions as to Witnesses and Evidence.

73. Evidence to be relevant and according to rules in English courts.
74. Judicial notice.
75. Calling of all prosecutor's witnesses.
76. Calling of witness whose evidence is not contained in summary or abstract.
77. List of witnesses of accused.
78. Procuring attendance of witnesses.
79. Adjournment of court for non-attendance of witnesses.
80. Evidence of the accused and his wife.
81. Withdrawal of witnesses from court.
82. Swearing of witnesses.
83. Mode of questioning witnesses.
84. Examination and cross-examination.
85. Questions to witness by members of court or judge-advocate.
86. Recalling of witnesses, and calling of witnesses in reply.

Friend of Accused and Counsel.

87. Accused may have a person to assist him on trial.
88. Counsel allowed in certain general courts-martial.
89. Requirements for appearance of counsel.
90. Counsel for prosecution.
91. Counsel for accused.
92. General rules as to counsel.
93. Qualifications of counsel.
94. Statement by accused defended by counsel or officer.

Proceedings.

95. Record in proceedings of transactions of court-martial.
96. Custody and inspection of proceedings.
97. Transmission of proceedings after finding.
98. Preservation of proceedings.
99. Rate of payment for copies of proceedings.
100. Loss of proceedings.

Judge-Advocate.

101. Appointment of judge-advocate and disqualification.
102. Substitute on death, illness, or absence of judge-advocate.
103. Powers and duties of judge-advocate.

Exception from Rules.

104. Suspension of rules on the ground of military exigencies or the necessities of discipline.

Field General Court-Martial.

105. Convening of field general court-martial.
106. Composition of field general court-martial.
107. As to field general court-martial where military exigencies occur.
108. Charge.
109. Trial of several accused persons.
110. Challenge.
111. Swearing of court.
112. Arraignment.

113. Plea to jurisdiction.
114. Evidence.
115. Mode of swearing witness and solemn declaration.
116. Defence.
117. Acquittal.
118. Sentence.
119. General provisions as to votes and powers of court.
120. Confirmation.
121. Application of rules.
122. Definitions.
123. Evidence of opinion of convening and confirming officer.

Part II.—MISCELLANEOUS.

Regulations for Courts of Inquiry, other than Courts of Inquiry held under section 72 of the Army Act.

124. Courts of Inquiry.

Regulations for Courts of Inquiry under section 72 of the Army Act, for the purpose of determining the illegal Absence of Soldiers.

125. Courts of inquiry as to illegal absence under sect. 72.

Explanation of "Prescribed" and "Commanding Officer."

126. Prescribed officer for committing, removing, commuting and discharging authority and for the purpose of ss. 43 and 73.
127. Prescribed procedure for court of inquest (India) under sect. 133.
128. Prescribed officer for competent military authority (sect. 101).
129. Definition of "commanding officer."

Prisons and Detention Barracks Abroad.

130. Committal and removal of soldiers under sentence in one colony to authorised prisons or detention barracks in other colonies.

Part III.—SUPPLEMENTAL.

131. Exercise of powers vested in holder of military office.
132. Cases unprovided for.
133. Forms in appendices.
134. Definitions.
135. Construction of rules.
136. Application of rules to Channel Islands and Isle of Man.
137. Extent of application of rules.
138. Short title.
139. Commencement of rules.

FIRST APPENDIX.
Forms of Charges.

SECOND APPENDIX.
Forms as to Courts-Martial.

THIRD APPENDIX.
Forms of Commitment.

RULES FOR FIELD PUNISHMENT.

RULES OF PROCEDURE, 1907. (*a*)

PART I.—ARREST AND TRIAL.

Arrest.

Report of delay of trial under Army Act, s. 45.

1. The special report of the necessity for further delay in ordering a court-martial to assemble for the trial of an officer or soldier required under section 45 of the Army Act, shall be made by means of a letter from the commanding officer of that officer or soldier reporting the necessity to the general or other officer to whom application would be made to convene a court-martial for the trial of that officer or soldier.

See generally as to Rules 1–8, ch. IV, and K.R., para. 463, *et seq.*

This rule prescribes the manner in which the special report required by s. 45 of the Army Act is to be made. A similar report must be furnished weekly until the accused is released or a court-martial assembled; and on the receipt of every such report, the general or other officer to whom it is sent must satisfy himself as to the necessity for the continued retention of the accused in custody. K.R., para. 464. This special report is not required on active service.

Power of Commanding Officer.

Duty of commanding officer as to investigation of charge for offence.

2. Every commanding officer will take care that a person under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of that person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a court-martial for the trial of the person charged.

Commanding Officer. See Rule 129 and note.

This Rule applies to officers as well as soldiers.

Investigated.—Army Act, s. 45 (5). This means that the investigation must be commenced, though it may be impossible to complete it within the time here specified. As to exclusion of Sunday, Good Friday, and Christmas Day, see Rule 135 (A).

Is not detained in custody, &c.—A commanding officer who unnecessarily detains a person in arrest or confinement, exposes himself to a charge under s. 21 (1) of the Army Act.

Shall be reported.—The report should be made by letter, and should refer specifically to the case, and state the reasons justifying the detaining of the accused in custody and preventing the investigation. The absence of an important witness would justify a remand; or the accused might be ordered to return to his duty, with a distinct intimation that his case will be investigated so soon as the absent witness can be obtained. K.R., para. 490.

Hearing of charge.

3. (A) Every charge against a soldier will be heard in the presence of the accused. The accused will have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement in his defence. On the application of the accused, he and his wife may be called as witnesses, subject to the provisions of Rule 80.

(*a*) These Rules supersede the Rules of Procedure, 1899, as amended by Army Orders dated April, 1902, and October, 1904, which they reproduce with certain changes necessitated chiefly by the new system of commands, and the amendments in the law introduced by the Army (Annual) Acts, 1906 and 1907.

(B) If the accused demands that the evidence against him be taken on oath, the oath will be administered to each witness by the investigating officer in the same form as provided for a court-martial, or, in the case of a witness allowed before a court-martial to make a solemn declaration, the like solemn declaration will be made before the investigating officer.

(A) As to the mode of conducting the investigation, see ch. iv, paras. 18-28; and K.R., paras. 483–491.

The Army Act and Rules do not require the investigation to be by the commanding officer, but do make him responsible for the decision, s. 46 (1). The evidence is not taken in writing, and, therefore, in the case of a remand, must be taken in writing afterwards as directed by Rule 5.

The accused may on his own application give evidence himself or call his wife as a witness (see Rule 80, which will apply to the evidence of the accused and his wife at this and every other stage of the proceedings). The accused's evidence will or will not be on oath, according as the evidence of the other witnesses is or is not on oath.

The right of the accused to make a statement will not be prejudiced by the fact that he has given or intends to give evidence himself, whether on oath or not.

(B) *Taken on oath.*—See note to s. 46 (6) of the Army Act.

Same form.—See Rule 82.

To make a solemn declaration.—See Army Act, s. 52 (4), and Rule 82 (D).

Disposal of the charge or adjournment for taking down the summary of evidence.

4. (A) The commanding officer will dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Army Act has been committed, or if, in his discretion, he thinks the charge ought not to be proceeded with.

(B) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, either—

(1) dispose of the case summarily ; or
(2) refer the case to the proper superior military authority ; or
(3) adjourn the case for the purpose of having the evidence reduced to writing.

Provided that the commanding officer shall not dispose of a case summarily unless the accused is a soldier, or if the accused, being a soldier, has elected (under Section 46 of the Army Act) to be tried by a district court-martial.

(C) Where the case is so adjourned, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, shall be taken down in writing in the presence of the accused before the commanding officer or such officer as he directs.

(D) The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down.

(E) The evidence of each witness when taken down, as provided in (C) and (D), shall be read over to him, and shall be signed by him, or, if he cannot write his name, shall be attested by his mark and witnessed. Any statement of the accused material to his defence shall be added in writing.

(A) Every offence which a person subject to military law can commit is an offence against the Army Act, because it is either a military offence or a civil offence. If it is a civil offence, it is provided for by s. 41; if it is a military offence, it is either particularly specified in the Act, or is an act to the prejudice of good order and military discipline under s. 40. Where the act done is not a civil offence, and is not specified in the Act, the commanding officer must consider whether it is or not to the prejudice of good order and military discipline, as, if not, it is not a military offence. He must

also consider whether, having regard to the limitations of time prescribed by the Act (sections 158 (1), 161), the accused is liable to be proceeded against. K.R., para. 489.

Ought not to be proceeded with.—If the commanding officer is of this opinion, on account either of the evidence being doubtful, or of the triviality of the case, or of the good character of the accused, or of a doubt whether the act done is to the prejudice of good order and military discipline, or as a matter of discretion, for any reason, he must dismiss the case. Army Act, s. 46; K.R., para. 488. To make an entry against the man without punishment is not dismissal of the case. The case must also be dismissed if the man has been previously acquitted or convicted of the offence by his commanding officer, or by any court, military or civil, Army Act, ss. 46 (7), 157, 162 (6). No particular time is fixed within which a commanding officer must dispose of a case, so that he can always carefully consider a difficult case; but as a rule he should decide immediately, and should never delay for more than a day, unless further evidence is required.

(B) Of the three alternative courses which a commanding officer may adopt in respect to a case which he thinks should be proceeded with, he will adopt the first (*i.e.*, disposing of the case summarily), unless the case is one of which he cannot dispose summarily, either by reason of the accused not being a private soldier (see K.R. 499), or by reason of the accused having elected to be tried by a district court-martial, or because he thinks the case is one which should be tried by court-martial, or because the case is one with which he cannot, without the leave of superior military authority, deal with summarily. There is no case which a commanding officer is *compelled* by the Act or the rules to send before a court-martial. But the offence of drunkenness by a private soldier must in certain cases be disposed of summarily (Army Act, s. 46 (3)). Para. 487 of the K.R. specifies the cases which may be disposed of summarily without reference to superior military authority. If the case is not one specified in that paragraph, but the commanding officer thinks that it is one that ought to be disposed of summarily, he will adopt the second alternative and refer the case to the proper superior military authority. In any other case the third alternative must be adopted. The final decision of the commanding officer as to whether the case should be tried by court-martial is deferred until the evidence has been taken down in writing and the commanding officer has considered the evidence so taken down. A summary is to be made whether it is intended to remand the accused for trial by a regimental or by district or general court-martial.

Without unnecessary delay, the adjourned hearing for reducing the evidence to writing should, if possible, be held the same day as the investigation.

As to the course to be followed, where sufficient evidence is not forthcoming at the investigation, or where a second offence is disclosed during the investigation, see K.R., paras. 490, 491.

Proper military authority, see Rules 134 (A), 135 (B).

(C)—(E).—The commanding officer, on adjourning the case for the purpose of having the evidence reduced to writing, may direct another officer to take down the evidence. But an officer who has given material evidence at the investigation must not be appointed for this purpose. At the adjourned hearing the accused must be allowed to put any reasonable question to a witness, and especially to put questions respecting any variance between the evidence taken down and that given before the commanding officer, such, *e.g.*, as would arise if the witness's answers in cross-examination before the commanding officer were omitted. In taking the evidence immaterial statements may be omitted. If the accused or his wife has given evidence before the commanding officer under Rule 3, he or she may, on the application of the accused, and subject to the provisions of Rule 80, give evidence, to be taken down in writing and inserted in the summary like the evidence of other witnesses under this rule, but neither he nor she can, in the absence of such an application, be compelled to repeat the evidence previously given. If either of them does give evidence under this rule, that evidence may be used in the like manner and for the like purposes as the evidence of other witnesses. Therefore, before the application of the accused is entertained, he should be warned of the use to which the evidence of himself and his wife, as taken down in the summary, may be put.

If the accused has made a statement, whether in addition to or in lieu of giving evidence under Rule 3, the material parts of his statement are to be added, but it will be advisable usually to take down fully any statement he makes; he cannot be required to sign it. The statement of an accused person can only be given in evidence at the trial if it is voluntary (see ch. VI, paras. 74 to

81), Before, therefore, an accused person makes any statement, he should be warned that he is not bound to say anything, and that any statement he makes may be used as evidence against him; and, if he is asked for his defence, a similar warning should be given to him; but if the statement was made voluntarily the mere fact that the warning was not given will not prevent the statement being used as evidence. In no case must he be authoritatively called on to account for his proceedings, or required to make any statement. See also Memoranda for Guidance of Courts-Martial, p. 582.

For the power to dispense with the provision of paragraphs (C), (D), and (E) of this rule, see Rule 104.

Remand of accused.

5. (A) The evidence and statement (if any) taken down in writing in pursuance of Rule 4 (in these rules referred to as the summary of evidence) shall be considered by the commanding officer, who thereupon shall either—

(1) remand the accused for trial by court-martial; or

(2) refer the case to the proper superior military authority; or

(3) if he thinks it desirable, and the accused is a soldier and has not himself elected to be tried by a district court-martial, rehear the case and dispose of it summarily.

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay either issue an order for the assembly of a court-martial, or apply to the proper military authority to convene a court-martial, as the case requires; this delay, and any delay in the reference to superior military authority, should not ordinarily exceed 36 hours.

(C) The summary of evidence, or a true copy thereof, shall be laid before the court-martial before whom the accused is tried on the assembly of the court.

(A) The commanding officer is to consider the evidence after it has been reduced to writing, and should be careful to note whether or not the evidence taken down in the summary corresponds to that given before him at the investigation. On the evidence being reduced to writing a different aspect may be given to the case; if so, the commanding officer may, if the case is within his jurisdiction and the accused has not elected (under s. 46) to be tried by a district court-martial, re-hear the case, and if he thinks fit, dispose of it summarily.

If the commanding officer determines to remand the accused for trial by court-martial, he will have to consider by what class of court-martial the accused should be tried. Usually, if the accused is not dealt with summarily, application should be made for a district court-martial. The application (like the charge-sheet) must be signed by the officer in actual command of the unit to which the accused belongs.

For form of application for court-martial see p. 604. See also Memoranda for Guidance of Courts-Martial, p. 582.

(B) *Without unnecessary delay.*—The order for a regimental court-martial should as a rule be issued so as to admit of the court assembling next day, care being taken to allow the interval of eighteen hours required by Rule 14 (A).

Thirty-six hours.—As to exclusion of Sunday, &c., in reckoning time, see Rule 135 (A).

(C) Where the accused is charged with several offences, the evidence in relation to each offence should be kept, so far as possible, distinct.

As to the summary of evidence of the trial, see Rule 17 (E) and note.

The accused is entitled to have a copy of the summary gratis: see Rule 14 (B).

Summary award of punishment by commanding officer.

6. (A) The term of detention when awarded by a commanding officer in days shall begin on the day of the award. The term of detention when awarded by a commanding officer in hours shall begin at the hour when the soldier sentenced is received at the detention barrack or branch detention barrack to which he is committed, or if he has not been sooner received into the detention barrack or branch detention barrack, shall begin on the day after the day of the award at the hour fixed for the commitment and release of soldiers under sentence.

(B) When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase the punishment for that offence.

Commanding officers must bear in mind the regulations as to summary award of punishments, K.R., paras. 493–507; and as to drunkenness, *ib.* paras. 508–513. See also ch. IV, paras. 31–38.

(A) A commanding officer will award his sentence, up to seven days, in hours, but if exceeding seven days, in days. K.R., para. 494. In law (in the absence of special provision) there is no division of a day, and, therefore, however late in the day a soldier under sentence is committed, his term of detention is considered to have commenced at the first minute of that day, that is, the first minute after midnight. Where, therefore, the sentence is awarded in days, the sentence will begin on the first minute of the day of the award. But where a sentence is awarded in hours, the detention by virtue of this rule will not commence until the hour at which the soldier is received into the detention barrack or branch detention barrack, or if he is not received into the detention barrack or branch detention barrack on the day of the award, then until the hour at which on the next day soldiers under sentence are usually received into the detention barrack or branch detention barrack. This rule will, therefore, allow a commanding officer, when there is no accommodation in the branch detention barrack, to postpone the commitment of the soldier for one day, and to keep him in the guard detention room without his term of detention beginning to run, till the usual hour of commitment on the next day after the detention is awarded, whether Sunday or not (see Rule 135 A); but if he is kept longer in the guard detention room, his term of detention will begin to run. It must be recollected that a soldier's pay cannot be stopped for any day on which he is in custody, before his detention begins to run under this rule.

(B) The award is considered final when the soldier has been removed from the presence of the commanding officer. The commanding officer can at any time diminish the punishment before its completion, though he cannot add to it.

As to entry of award or decision of commanding officer in each case, K.R., paras. 485, 507.

Right of trial by court-martial in lieu of summary award.

7. (A) If a soldier is dealt with summarily by his commanding officer, and the award or finding involves a forfeiture of pay, or (though such forfeiture is not involved) the award is not an award of a minor punishment, and his commanding officer has omitted to ask him whether he desires to be dealt with summarily or to be tried by a district court-martial, the soldier may, at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence, claim his right to be tried by a district court-martial.

(B) Except as mentioned in sub-section (8) of section 46 of the Army Act and in this rule, a soldier has no right to claim a trial by court-martial.

A commanding officer should of course never omit to put to the soldier the question which he is directed by s. 46 (8) of the Act to put; but in the case of such an omission the soldier may claim a court-martial within the time mentioned in this rule.

Right to be tried.—The effect is that the court tries the case without reference to the proceedings of the commanding officer as regards the question of the accused person's guilt or innocence. The claim of the soldier to be tried is not of itself a reason for awarding a more severe punishment than the commanding officer might have awarded. While it is competent to the court to pass such a sentence as the nature and degree of the offence and the antecedents of the accused may seem to them to warrant, they should bear in mind that the commanding officer, who is primarily responsible, has, by electing to make a summary award, implied that a summary punishment is in his judgment sufficient in the interests of discipline.

Minor punishment. See K.R., para. 493.

Procedure on charge against officer.

8. (A) Where an officer is charged with an offence under the Army Act the investigation shall, if he requires it, be held, and the evidence taken in his presence in writing, in the same manner, as nearly as circumstances admit, as is required by Rules 3 and 4 in the case of a soldier.

(B) Where an officer is ordered for trial by court-martial without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him gratis not less than twenty-four hours before his trial, and shall be laid before the court-martial on the assembly of the court.

(A) The effect of this provision is to give the commanding officer the option of dispensing with any public proceeding preliminary to trial, unless the accused officer demands it. It does not preclude the commanding officer from calling the officer before him and investigating the case as he may deem necessary. The officer, however, can only demand the formal investigation of his case by the commanding officer, and has no right under this Rule to demand a court of inquiry.

(B) The convening officer will be responsible for the preparation and furnishing of this abstract, which should not be too much in detail. It should always be delivered as a matter of course, even though the subject matter of the charge may previously have been investigated by a court of inquiry; and if a court of inquiry has been held, the officer may have a copy of its proceedings. See Rule 124 (M).

Where there are several charges, the abstract should be divided so as to correspond to each charge.

For the power to dispense with observance of this rule on the ground of military exigencies, or the necessities of discipline, see Rule 104.

Framing Charges.

Charge-sheet and charge.

9. (A) A charge-sheet contains the whole issue or issues to be tried by a court-martial at one time.

(B) A charge means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.

The convening officer is by Rule 17 made responsible for the charge, which in practice is usually framed by the adjutant, or some other officer under the direction of the convening officer. The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs.

Commencement of charge-sheet.

10. Every charge-sheet will begin with the name and description of the person charged, and should state, in the case of an officer, his rank, and name, and corps (if any), and in the case of a soldier, his number, rank, and name, and corps (if any), and where he does not at the time of the trial belong to the regular forces, should show by the description of him, or directly by an express averment, that he is amenable to military law in respect of the offence charged.

The name or description of a person charged is immaterial, so long as his identity is established. In military courts it is also necessary to establish that he is subject to military law. As an officer or soldier of the regular forces is always subject to military law, a statement that the accused belongs to a battalion composed of the regular forces, will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, without expressly adding the words, that he is subject to military law. If the accused belongs to the militia, yeomanry, or volunteers, or to the reserves, the charge must state, and the court must by evidence or from their military knowledge be satisfied, that he was at the time of the offence subject to military law. If he is a civilian, or if his name and position are unknown, as may happen in the case of active service, the charge should expressly aver that he was subject to military law, although it will be sufficient if the description of the accused is such as to imply that he was so subject. Evidence must be given of the fact, as, for instance, that he was a sutler, or the holder of a pass from the officer in command, or that he was found in camp, or under such circumstances as to show that he was subject to military law. See illustrative form No. 9, p. 545.

Contents of charge.

11. (A) Each charge should state one offence only, and in no case should an offence be described in the alternative in the same charge.

(B) Each charge should be divided into two parts—

(1) The statement of the *offence;* and,

(2) The statement of the *particulars* of the act, neglect, or omission constituting the offence.

(C) The offence should be stated, if not a civil offence, in the words of the Army Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(D) The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as constituting the offence.

(E) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.

(F) Where it is intended to prove any facts in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the *particulars* should state those facts.

(A) to (C). See First Appendix, Forms of Charges, and Preliminary Note as to use of Forms of Charges, p. 529, and Memoranda for Guidance of Courts-Martial, p. 582.

A single transaction, although technically disclosing more than one offence, should not as a rule be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged, the language being admissible in evidence as to the intent.

Words of the Army Act.—Under Rule 134 (C), this will include the words of any other Act creating the offence, such, for instance, as the Acts relating to the reserve or auxiliary forces. Where the offence is under any such Act, care must be taken to observe this rule. See Note as to use of Forms of Charges (25), p. 532.

Although the description of an offence in the alternative in the same charge would make the charge bad, it does not therefore follow that the word "or" is never to appear in the charge. For instance, a charge under section 15 of the Act of "when in garrison, being found beyond the limits fixed by general orders without a pass or written leave from his commanding officer" is a good charge, because in this case he is not charged with one offence or the other, but with a single offence, which is constituted by his having neither a pass nor written leave. If in the charge the words "beyond the limits fixed by general or garrison orders" were used, the charge would be a bad charge, because it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by garrison orders.

When offences against civil law are tried by court-martial under section 41 of the Army Act, although technical terms need not be used in the charge, the essence of the civil offence must be expressed—*e.g.*, in a case of damaging property, the charge must aver the damage to have been done "wilfully" or "maliciously."

(D) If of the acts or omissions indicated in the particulars sufficient are not proved to constitute the offence charged, but nevertheless other acts and omissions not so indicated but sufficient to constitute the offence are proved, the accused is entitled to be acquitted of the charge, but may be detained in custody and be tried anew in respect of the last-mentioned acts or omissions. For instance, if the accused is charged with having been absent without leave, in that he was absent from his regiment without leave on the 10th, 11th, and 12th days of August, and he proves that on those three days he was in barracks on duty, but it appears from the evidence that he was absent without leave on the 21st of the same month, the date is so material as to amount to a new charge, and the accused must be acquitted, though he may be tried on a new charge of being absent without leave on the 21st of August. In such a case a special finding is of no avail, as it cannot introduce new material particulars not mentioned in the charge. See note to Rule 44 (C).

If, however, he were charged with being absent from the 10th of August, until he was apprehended on the 21st, and it is proved that he was absent during that time, but that his absence began on the 1st of August and he was apprehended on the 23rd, he may be convicted, as the material part of the charge, absence from the 10th to the 21st of August, is proved.

When there is such a divergence between the head of charge and the statement of the particulars that each in substance discloses a different offence, the charge is bad, and a conviction, even on a plea of guilty, could not be upheld. But the incidental mention of a separate offence in the particulars would not of itself invalidate the charge. A charge of desertion in which the particulars alleged that the accused broke out of barracks on a certain day, and was absent without leave for a certain time, was held to be good, inasmuch as these facts were mentioned as incidents of the offence charged, and the accused was still distinctly informed that the charge he had to meet was one of desertion. So was a charge of desertion (in which the duration of the absence was an element) where the particulars stated that the accused absented himself without leave for the time stated. Where the head of charge discloses no offence, but the statement of particulars does, and with sufficient precision to inform the accused of his offence, a conviction of the offence disclosed in the particulars was, notwithstanding the irregularity, held good.

(E) An instance of this will be seen in Form No. 49 of the illustrated forms added at the end of Appendix I, p. 551. If in such cases the persons charged were to be acquitted of the first charge and convicted on the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

(F) If these facts are stated in the charge, evidence must be given by the prosecution to show the amount which ought to be deducted from the pay of the accused. Note as to use of Forms of Charge (23), Appendix I, p. 532.

By K.R., paras. 563, 564, the value of any article in respect of which it is desired that the court shall sentence the offender to stoppages must be stated in the particulars. It is, however, unnecessary to state the value of regimental necessaries or of personal clothing, as a court-martial does not award stoppages for them. As to evidence of value, see note to Army Act, s. 24 (4).

Validity of charge-sheet.

12. (A) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(B) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included, though not expressed therein.

(A) Although the trial of an offender is not invalid on account of a mistake in a name, such mistakes are dangerous, in so far as they may lead to mistakes of substance. For instance, the accused might thus be mistaken for a man named in a certificate of previous conviction or in the conduct book, and a mistake of this description might cause the invalidity of the whole proceeding. Where, however, a man has enlisted and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge sheet by correcting, under Rule 33 (A), any mistake in the name or description of the accused.

(B) The object of this paragraph is purely legal, and does not touch the duties of an officer. If the proceedings were questioned in a court of law it would require that court to presume matters which, though not stated in the charge, were necessary to support its validity.

Preparation for Defence by Accused Person.

Opportunity for accused to prepare defence.

13. An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend or legal adviser with whom he may wish to consult.

The freest communication which is consistent with good order and military discipline and with the safe custody of the accused should be allowed. A failure to give the accused full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings.

The accused is not bound to call as witnesses everyone with whom he communicates with reference to giving evidence.

As to friend of accused in court, see Rule 87; and as to counsel at general and district courts-martial, Rules 88–94.

As to the right of the accused to consult the judge-advocate on questions of law, see Rule 103 (A).

For the power to dispense with this rule, see Rule 104.

Information of charge and delivery of summary of evidence and list of officers to accused.

14. (A) The accused, before he is arraigned, should be informed by an officer of every charge on which he is to be tried; and also that, on his giving the names of any witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly; the interval between his being so informed and his arraignment should not be less, in the case of a regimental court-martial, than eighteen, and in the case of any other court-martial, than twenty-four hours.

(B) The officer, at the time of so informing the accused, should give the accused a copy of the charge-sheet, and, where the accused is a soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him.

The officer will, at the same time, give to the accused gratis a true copy of the summary of evidence.

(C) A list of the names, rank, and corps (if any), of the president and officers who are to form the court, and where officers in waiting are named, also of those officers, should, as soon as the president and officers are named, be delivered to the accused if he desires it.

(D) If it appears to the court that the accused is liable to be prejudiced by any non-compliance with this rule, the court should take steps, and, if necessary, adjourn to avoid the accused being so prejudiced.

Arraigned. See ch. V, para. 49.

(A) By Rule 78 (A) the convening officer, or, after the assembly of the court, the president of the court, is required to take the proper steps to procure the attendance of witnesses whom the accused desires to call. Commanding officers will therefore take care that any request of the accused for witnesses shall be transmitted to the convening officer, or, after the court is convened, to the president of the court. The request of an accused person should only be refused if it is quite clear that the evidence of the witness will be immaterial, or if it is impossible to secure the attendance of the witness within a reasonable time. Any refusal of his request should be communicated to the court, with the reasons for the refusal, and the court will deal with the matter under paragraph (D). See also Rule 77.

In the case of an essential witness the court should always adjourn for the purpose of enabling him to attend, as the absence of such a witness may cause the proceedings to be invalid.

(B) A copy of the charge-sheet must always be given, unless this rule has been suspended under Rule 104. Even where it is so suspended, the full charge must be clearly explained to the accused, as otherwise he has not proper opportunity to make his defence. If the accused objects to the charge he will have an opportunity of making his objection when called on to plead. Rule 32.

The accused must also be given gratis a copy of the summary of evidence, except in a case where this rule has been suspended.

(C) In the case of a general court-martial, this list should invariably be delivered, although a request is not made. In the case of a district court-martial also, the list should be delivered, notwithstanding the absence of a request, if there is any reason to suppose from the circumstances of the case that the accused may reasonably object to any member of the court.

The prosecutor will usually be the officer on whom the duty of complying with the provisions of Rule 14 devolves; when he is not, he should, before the trial, satisfy himself that it has been complied with. Compliance with this rule, as well as with Rule 13, may be dispensed with on the ground of military exigencies, or the necessities of discipline, by virtue of Rule 104; but in every case the accused must have information of the charge, and opportunity of calling his witnesses.

(D) See note above on (A).

Joint trial of several accused persons.

15. Any number of accused persons may be tried together for an offence charged to have been committed by them collectively, but in

such a case notice of the intention to try the accused persons together should be given to each of the accused at the time of his being informed of the charge, and any accused person may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence; the convening authority or court, if satisfied that the evidence will be material, and if the nature of the charge admits of it, shall allow the claim, and the person making the claim shall be tried separately.

Each of the accused should also be told that, if he gives evidence himself, and in doing so gives evidence against any of the other persons charged with the same offence, he will be liable to be cross-examined as to character. But this liability will not of itself entitle the accused to claim to be tried separately.

It must be remembered that though each of the accused is a competent witness, none of the other persons charged with the same offence can compel him to give evidence. The reason, therefore, for allowing accused persons to claim to be tried separately remains unaffected by the new law.

If the nature of the charge.—In the case of conspiring to cause a mutiny, or joining in a mutiny, the essence of the charge is combination between the accused. In such a case the nature of the charge may not admit of their being tried separately. In cases of doubt, the accused should be tried separately.

See Rule 71 and note.

Convening of Court-Martial.

Convening of regimental court-martial.

16. A regimental court-martial shall be ordered to assemble as soon as seems to the convening officer practicable (having regard to Rule 14 (A)), after the completion of the investigation by the commanding officer into the charge which the court-martial is to try.

See Army Act, s. 47, K.R., para. 559. For form see Appendix II, Form No. 3.

A regimental court-martial should assemble as soon as possible after the interval, which is required by Rule 14 (A), between the accused being informed of the charge and the meeting of the court. Where, therefore, that rule is suspended by an order under Rule 104, the court should assemble immediately.

The officer convening a regimental court-martial will appoint or detail (see Rule 17 (D)) not less than three officers as members of the court, each of whom must have held a commission during not less than one whole year. The above number (which is the legal minimum for a regimental court-martial) includes the president, who is also appointed by the convening officer, and must not be under the rank of captain, except in the case of the court being held on the line of march, or on board a ship, or unless the convening officer is of opinion that a captain is not, with due regard to the public service, available. In the latter case he must state that opinion in the order convening the court. In any of the above excepted cases he can appoint an officer of any rank to be president; but he can in no case appoint himself, or, indeed, sit on the court-martial. Army Act, ss. 47 (3) (4); 50 (2).

Regimental courts-martial will now, however, be infrequent, as the commanding officer has now greater powers of summary award, and it has been laid down that, for cases not summarily disposed of, a district court-martial should as a rule be convened.

Procedure of officer on convening court-martial.

17. (A) An officer before convening a court-martial should first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Army Act, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the accused, or refer the case to superior authority.

(B) He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.

(C) If more than fifteen days in the United Kingdom, or more than thirty days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial receives

an application for a court-martial, and the date at which the case is disposed of, either by the assembly of a general or district court-martial, or otherwise, the officer shall report the case, and the reasons for the delay, if elsewhere than in India, to the Army Council, and if in India to the Commander-in-chief of the forces in India.

(D) The officer convening a court-martial shall appoint or detail the officers to form the court, and may also appoint or detail such waiting officers as he thinks expedient.

(E) The officer convening a court-martial shall send to the officer appointed president the original charge-sheet on which the accused is to be tried, and the summary or abstract of evidence.

(A) and (B). With respect to the duties of the convening officer, see ch. V, paras. 28–33; and K.R., paras. 547–571.

(A) In the case of a general court-martial in the United Kingdom, the charge and summary of evidence should invariably be submitted by the convening officer to the Judge Advocate-General before the court is convened (see also Rule 101 (A) and note).

(C). The convening officer must state in the order convening the court his opinion in the following cases:—

(1) As to the rank of the president (see Army Act, s. 47 (4), 48 (9)).

(2) As to the rank of members (Rule 21).

(3) As to members belonging to different corps or regiments (Rule 20).

The opinion as to military exigencies dispensing with certain rules (see Rule 104) should be in a separate order, signed by the convening officer.

(D) See generally as to a general or district court-martial, the number of members and their qualification and rank, and the rank of the president, Army Act, ss. 48, 182 (4); K.R., paras. 576, 578.

The convening officer must appoint by name the president of a general or district court-martial, who must not be under the rank of field officer, unless—

(i) The convening officer is under that rank; or

(ii) The convening officer is of opinion that a field officer is not with due regard to the public service available.

In either of such cases he may appoint an officer not below the rank of captain; and in the case of a district court-martial, if he thinks a captain is not, with due regard to the public service, available, may appoint an officer below that rank, unless the court is to try a warrant officer. Army Act, ss. 48 & 182 (4). But whenever a general officer or colonel is available to sit as president of a general court-martial, an officer of inferior rank is not to be appointed. K.R., para. 578 (i).

The legal minimum of a general court-martial in the United Kingdom, India, Malta, and Gibraltar is nine, and elsewhere five.

The legal minimum of a district court-martial is three. Army Act, s. 48 (3), (4).

Under s. 53 of the Army Act, a court-martial which after the commencement of the trial is reduced below the legal minimum, is dissolved. The King's Regulations, para. 576, therefore point out that where the trial is likely to be prolonged it is desirable to form a general court-martial of more than the legal minimum, in order that the court may not be dissolved, if one member fails through illness or otherwise. In such case not less than thirteen officers should usually be appointed, or if thirteen cannot conveniently be assembled, eleven. In the case of a district court-martial it will seldom be necessary to appoint more than the legal minimum, as it is unusual for a trial before a district court-martial to extend beyond two days, and little inconvenience will usually arise from the dissolution of the court, as if the proceedings have not been concluded, the accused can be tried by another court.

It will usually be desirable, in the case of a general court-martial where the trial is likely to be prolonged, to add two or more waiting officers, in order to fill the places of officers retiring on a challenge, and the same course will not unfrequently be expedient in convening a district court-martial, K.R., para. 576.

(E) The order for the assembly of the court-martial should also be sent. The notes to the Form of Application for a court-martial (below, p. 604) show how the convening officer should deal with the various documents transmitted to him.

The object of this paragraph is to enable the original charge-sheet to be annexed to the proceedings, and also to enable the president of the court-martial to examine before the court meets the charge-sheets and summary of evidence in the different cases, so that he may have a general knowledge of the cases which are to come before the court. If any amendment in the charges appears to him to be required he should communicate with the convening officer before the trial begins. See above, Rule 5 (C).

Where the accused pleads guilty the summary of evidence may be used for determining the sentence. Rule 37 (B). Otherwise the summary of evidence may be used at the trial for the purpose of showing that the witness has contradicted himself or has made a particular statement; and during the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence, and if there is any material variance should question the witness respecting the variance.

The summary of evidence cannot otherwise be used as evidence, and if the witness is absent, must not be read or referred to by the court so far as it relates to that witness. Great care must be taken by the members of the court not to be biassed in any way by the statements in the summary of evidence, except so far as they affect the credibility of the witness by showing that he has contradicted himself; indeed, it may usually be expedient that no one but the president should refer to the summary.

Any statement (but not the evidence) of the accused contained in the summary of evidence, if not taken contrary to the directions in note to Rule 4 (C)-(E), may, and usually should, be read to the court as evidence, whether it is in favour of or against the accused.

Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings (see App. II, Form of Proceedings, para. (4), p. 564). If the accused pleads not guilty, the summary may be destroyed, but it will usually be convenient to enclose it with the proceedings when sent to the confirming officer; it need not, however, be annexed to the proceedings unless there is a material variance between the statement of any witness in the summary and his evidence at the trial.

Abstract of Evidence. See Rule 8 (B).

Adjournment for insufficient number of officers.

18. (A) If before the accused is arraigned the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge, or otherwise, the court should ordinarily adjourn for the purpose of fresh members being appointed; but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

(B) If the court adjourns for the purpose of the appointment of a new president, or of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

(A) Under this paragraph a court for which, say, thirteen members have been detailed, will not ordinarily begin the trial with less than thirteen, although they *may* proceed, unless reduced below the legal minimum (see notes to Rules 16, 17). The court should always adjourn, unless there are strong reasons against it.

If at any time the number of officers is, from whatever cause, below the legal minimum, or the president is absent (Rule 65 (B)), there is no court; if the proceedings under Rule 22 are not begun, no court can be formed; if they are begun they must immediately cease. In either case a report of the circumstances should be made to the convening officer by the president, or, if he is absent, by the senior officer present.

(B) *New President.*—This will apply if the president is found to be ineligible or disqualified (Rules 19, 22), or not to be of the required rank (Rule 22 (A) (iv)), or if an objection to the president is allowed (Army Act, s. 51 (3), and Rule 25), or if the president cannot attend (Army Act, s. 53 (2)).

Fresh Members.—The court will adjourn under the circumstances mentioned in paragraph (A) of this rule, as to which see Rules 19, 22, and 25, and Army Act, s. 51. After the trial has once begun, fresh members cannot be appointed in any circumstances, Army Act, s. 53 (1).

Ineligibility and disqualification of officers for court-martial.

19. (A) An officer is not eligible for serving on a court-martial if he is not subject to military law.

(B) An officer is disqualified for serving on a court-martial if he—

(i.) Is the officer who convened the court; or

(ii.) Is the prosecutor or a witness for the prosecution; or

(iii.) Investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the company, &c., commander who made preliminary inquiry into the case; or

(iv.) Is the commanding officer of the accused, or of the corps or battalion to which the accused belongs; or

(v.) Has a personal interest in the case.

(C) An officer is not eligible to serve on a court-martial unless he has held a commission during not less than the following periods, that is to say:—

(i.) If it is a regimental court-martial, one whole year;

(ii.) If it is a district court-martial, two whole years;

(iii.) If it is a general court-martial, three whole years.

(A) *Eligible* is used with reference to an officer being subject to military law, and of the necessary standing. It refers, in point of fact, to the status of the officer, and involves no personal considerations.

(B) *Disqualified*, on the other hand, is used with reference to personal disqualification on the part of an officer.

It will be observed that most of the disqualifications are contained in the Army Act, s. 50 (2), (3).

Except so far as provided by Rule 20, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial, for the Army Act, s. 50 (1), provides that "the officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps."

(iii) *Investigated.*—In consequence of the increased power of disposing of offences now given to company, &c., commanders, and in order to prevent prejudice, this Rule has now been amended so as to disqualify the officer who takes the summary of evidence, and the company, &c., commander who makes the preliminary inquiry into the case.

(v) *Personal interest.*—This will extend to even a remote or very small interest; for example, in a charge relating to the embezzlement of a sum, however small, belonging to the regimental mess, every officer of that mess has a personal interest, and is therefore disqualified. A remote or even a merely technical interest has been held to disqualify a person in a judicial position. For example, a person who holds as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

(C) This is taken from the Army Act, ss. 47 (2), 48 (3) (4).

Further, an officer is not, when it can be avoided, to be detailed to sit on a court-martial unless he has previously attended as a supernumerary at least twenty-five times, and is, in the opinion of his commanding officer, competent: K.R., para. 572. When the number is three, not more than one member is to be a subaltern officer. In doubtful or complicated cases the court should still, when possible, consist of five officers.

Corps of members of court-martial.

20. (A) A general or district court-martial shall, as far as seems to the convening officer practicable, be composed of officers of different corps, and in no case shall be composed exclusively of officers of the same regiment of cavalry, or the same battalion of infantry, unless the convening officer states in the order convening the court that in his opinion other officers are not (having due regard to the public service) available, and also, if he belongs to the same regiment of cavalry or battalion of infantry as the accused, that an order to convene a court composed partly of other

officers cannot be obtained from superior authority within a reasonable time.

(B) In the case of a court-martial for the trial of an accused person belonging to the auxiliary and not to the regular forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) practicable, one member at least of the court should belong to that branch of the auxiliary forces to which the accused belongs.

(A) See Army Act, s. 50. General and district courts-martial are army and not regimental courts. The general rule as to such courts-martial is that—

(1) They should not be composed of officers belonging to the same corps; and

(2) They must not be composed of officers belonging to the same regiment of cavalry or battalion of infantry, or similar unit, such as a company or battery of artillery.

This rule is subject to two exceptions:—(1) If it does not seem practicable to the convening officer that the court-martial should be composed of officers belonging to different corps, it may be composed of officers belonging to the same corps. (2) If the convening officer is of opinion that, having due regard to the public service, officers of more than one regiment of cavalry or one battalion of infantry are not available, the court-martial may be composed of officers all belonging to the same regiment of cavalry or battalion of infantry; but in this case the convening officer must state in the order convening the court that such is his opinion. Further, if the convening officer belongs to the same regiment of cavalry or the same battalion of infantry as the accused, he must also state in the order that an order to convene a court composed partly of officers belonging to a different regiment of cavalry or battalion of infantry cannot be obtained from superior authority within a reasonable time.

(B) For example, if the accused is a volunteer, one member of the court must, if practicable, be a volunteer officer. The adjutant of a militia of volunteer corps is considered as an officer of that corps for the purposes of this rule.

In applying this rule, it must be recollected that volunteer officers and (if commissioned before the 17th August, 1901) yeomanry officers are usually not subject to military law, and, except when so subject, are not eligible to serve on a court-martial.

Rank of members of court-martial in certain cases.

21. (A) In the case of a general court-martial, five at least of the members must not be below the rank of captain.

(B) The members of a court-martial for the trial of an officer shall be of an equal, if not superior, rank to that officer, unless in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, officers of that rank are not (having due regard to the public service) available; and in no case shall an officer under the rank of captain be a member of a court-martial for the trial of a field officer.

(A) Army Act, s. 48 (3).

(B) The last two lines are taken from the Army Act, s. 48 (7).

On the trial of a subaltern officer, two officers of subaltern rank will be a sufficient proportion to be detailed as members of the court.

Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the commanding officer of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused. K.R., para. 578.

Procedure at Trial—Constitution of Court.

Inquiry by court as to legal constitution.

22. (A) On the court assembling, the order convening the court shall be read, and also the names, rank, and corps of the officers appointed to serve on the court; and it shall be the first duty of

the court to satisfy themselves that the court is legally constituted; (that is to say),

(i.) That so far as the court can ascertain, the court has been convened in accordance with the Army Act, and these Rules;

(ii.) That the court consists of a number of officers not less than the legal minimum, and, save as mentioned in Rule 18, not less than the number detailed;

(iii.) That each of the officers so assembled is eligible and not disqualified for serving on that court-martial;

(iv.) That the president is of the required rank and duly appointed; and

(v.) In the case of a general court-martial, that the officers are of the required rank.

(B) The court should further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial.

(C) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

It is of great importance for the court, as far as lies in their power, to ascertain that they have jurisdiction. See Chapter VIII.

(A) See Appendix II, Form of Proceedings, para. (1), p. 561.

(i) The sections of the Army Act relating to the convening of courts-martial are ss. 47, 48, 49, 50, 122, 123; in the case of marines, s. 179; in the case of His Majesty's Indian forces, s. 180; in the case of warrant officers, s. 182 (4); and in the case of persons not belonging to His Majesty's forces, s. 184 (1). The rules referring to the convening of the court are Rules 17 to 21.

The court, in considering whether they are convened in accordance with the Act and Rules, can only look at the order convening the court, and cannot inquire whether the officer issuing the order has or has not a warrant which justifies the issue of the order. But they must have regard to Rules 20 and 21, and should see that the order states all that it is required to state. (See note to Rule 17 (C).)

(ii) *Legal minimum*, see Army Act, ss. 47, 48, and note on Rule 17. In counting the number of officers the president is included.

(iii) applies to the president as well as to the other officers. Where there has been a court of inquiry, care should be taken that no member of that court is appointed to serve on the court-martial.

As to eligibility and non-disqualification, see Rule 19 and note, and chap. V, para. 37.

(iv) As to *rank of president*, see Army Act, ss. 47 (4), 48 (9), 182 (4). If the president in the case of a general or district court-martial is not a field officer, it will be necessary to ascertain that a proper statement is in the order convening the court. See note to Rule 17 (D).

(v) *Required rank*. See Rule 21, and note.

(B) The court must consider whether the judge-advocate is appointed by the proper authority as well as in the proper manner. In the United Kingdom, therefore, they should ascertain that the judge-advocate is appointed by the Judge-Advocate-General. Out of the United Kingdom, if the judge-advocate is appointed by the convening officer, the court must assume that that officer is authorised by a warrant to appoint the judge-advocate. As to disqualification, see Rule 101 (B).

Inquiry by court as to amenability of accused and validity of charge.

23. (A) The court, when satisfied on the above matters, should satisfy themselves in respect of each charge about to be brought before them,—

(i.) That it appears to be laid against a person amenable to military law, and to the jurisdiction of the court; and

(ii.) That each charge discloses an offence under the Army Act, and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(B) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

(A) *Satisfy themselves.*—See Appendix II, Form of Proceedings, para. (1) p. 561.

Amenable to military law.—See introductory observations to Part V of the Army Act, p. 413, *et seq.*

Amenable to the jurisdiction of the Court.—The following are examples of cases where the accused would not be amenable:—if the court were a regimental court-martial and the accused were a warrant officer or camp follower (Army Act, s. 182 (1), 184 (1)); or if a reserve man were charged with an offence committed when not subject to military law, unless the offence be one mentioned in the Reserve Forces Act, 1882, ss. 6, 15; if the accused were a field officer, and the court comprised a member under the rank of captain (Army Act, s. 48 (7), and Rule 21 (B)); if the court were a field general court-martial under s. 49, and the accused was not on active service, and the offence charged was not committed against the property or person of an inhabitant of, or resident in, the country.

In the case of persons not belonging to the forces, the question of amenability may depend on whether such person is subject to military law as an officer (Army Act, s. 175 (7) (8)), or as a soldier (see Army Act, s. 176 (9), (10)).

Where the accused is a marine, the question whether he is amenable or not (see s. 179 (1)) cannot be apparent to the court, and therefore at this stage of the proceedings the court must presume that the accused is amenable, unless the accused challenges their jurisdiction on some ground which appears to them reasonable and probable; in that case they should refer to the convening officer.

Questions of amenability may also possibly arise with reference to natives of India (see Army Act, ss. 175 (7), 176 (10), and 180 (2) (*a*)).

Framed.—See Rules 10 and 11.

The inquiry by the court under Rules 22 and 23 is not required to be, but may be, in closed court.

Procedure at Trial—Challenge and Swearing.

Appearance of prosecutor and accused.

24. When the court have satisfied themselves as to the above facts, the prosecutor, who must be a person subject to military law, should take his place, and the court shall cause the accused to be brought before the court.

The duty of appointing the prosecutor devolves on the convening officer, who, in the trial of a soldier, ordinarily selects the adjutant of the regiment to which the accused belongs. But the convening officer must not appoint himself to be prosecutor, and the prosecutor must not confirm the finding and sentence of the court. In trials by general court-martial, and in complicated cases, a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duties, so that he may be enabled fully to master the case. In ordinary cases, one of the officers mentioned in Rule 19 (B) (iii) may suitably be detailed to act as prosecutor.

As to counsel, see Rules 88–94.

Proceedings for challenge of members of court.

25. (A) The court, upon the accused being brought before them, shall ascertain that the court is constituted of officers to whom the accused makes no reasonable objection.

(B) The accused has no right to object to the prosecutor or judge-advocate.

(C) The accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(D) The accused may call any person to give evidence in support of his objection.

(E) If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the

lowest in rank will be disposed of first; except that, if the president is objected to, the objection to him will be disposed of before the objection to any other officer. On an objection to an officer, all the other officers present shall declare their opinions on the disposal of the objection, notwithstanding that objections have been made to any of those officers.

(F) When an objection to an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings.

(G) When an officer objected to (other than the president) retires, and there are any officers in waiting, the vacancy shall be forthwith filled by one of the officers in waiting being directed to serve in lieu of the retiring officer. If there is no officer in waiting available, the court will proceed as directed by Rule 18.

(H) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, including that of president, will be ascertained by the court, as in the case of other officers appointed to serve on the court.

This rule must be read in connection with section 51 of the Army Act.

For Form, see Appendix II, Form of Proceedings, para. (2), p. 562.

(A) The accused cannot object to the court collectively, but must make each objection separately. If the accused persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and should deal with such objections in the usual way. The court may be closed to consider each objection. The objections, together with the statement of any witnesses examined are to be entered in the proceedings.

An officer objected to on the score of personal enmity, prejudice, or malice, or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request, and be permitted, to withdraw.

Objections to individual members under this rule are quite distinct from a plea to the jurisdiction of the court (as to which see Rule 34), though an objection may be equivalent to a plea to the jurisdiction of the court; as, for example, when an objection is made to the rank of the president, or when on the trial of a field officer one of the members is objected to because he is below the rank of captain. In such case the objection should be allowed, although it might be raised subsequently under Rule 34.

(B) This is because the prosecutor and judge-advocate do not form a part of the court.

(D) The witnesses cannot be examined on oath, as the court are not yet sworn, but Rules 83 and 84 will substantially apply.

The accused may apply to give evidence himself or to call his wife as a witness (see Rule 80).

(E) The object of the latter part of the paragraph is to secure a sufficient number of officers to determine the objections.

Other officers.—This excludes an officer from voting on his own case.

Present, i.e., who have not retired on the objection being allowed.

(F) An objection to the president is allowed, if allowed by one-third or more of the other officers appointed to form the court, and who have not retired. If the objection is allowed, the court must adjourn for the purpose of the appointment of another president. (See Rule 18 (B), and note.) The convening authority must appoint another president, subject to the same right of the accused to object (Army Act, s. 51 (3), (4)), or must convene a new court. (Rule 18 (B).)

(G) *Directed to serve.*—This "prescribes," under s. 51 (5) of the Army Act, the manner of filling a vacancy. It is the duty of the president to appoint one of the officers in waiting to fill a vacancy.

Proceed as directed by Rule 18.—That is, if the court are reduced in number below the legal minimum, they must adjourn for the purpose of the appointment of fresh members; and though not so reduced they should ordinarily adjourn unless they are of opinion that, in the interests of justice and for the good of the service, it is inexpedient to adjourn.

(H) Inasmuch as this paragraph directs that the eligibility and absence of disqualification of an officer filling a vacancy are to be ascertained by the court, as in the case of other members, the court will ascertain that he is eligible and not disqualified under Rule 19, before the accused is asked

whether he objects to him, but as this does not form part of the recorded proceedings, it may be done by the court in the case of officers in waiting at the same time as the inquiry under Rule 22, before the accused is brought before them. The accused will be asked whether he objects to the new officer, and if he does, the objection will be dealt with, if he is junior to any other officer objected to, immediately, if not, after the objections to any other officers who are junior to him have been disposed of. He will, though objected to, have to vote on the objection to any other officer who is junior to him. The court should always, in a doubtful case, allow an objection, as it is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

Swearing of members.

26. As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been over-ruled, the oath shall be administered to each member of the court as follows :—

(i.) If there is a judge-advocate, the oath shall be administered by him to the president first, and afterwards to the other members of the court ;

(ii.) If there is no judge-advocate, the oath shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already sworn.

The form of oath is set out in s. 52 (1) of the Army Act.

See Appendix II, Form of Proceedings, para. (2), p. 563.

As to mode of swearing, see note to Rule 30.

The oath may be administered to each member separately, or to two or more members collectively. Peers are sworn as other members.

A solemn declaration may be substituted for an oath under the circumstances specified in the Army Act, section 52 (4).

As to swearing the court to try several persons, see Rule 71.

Swearing of judge-advocate and other officers.

27. After the members of the court are all sworn, an oath shall be administered to the following persons, or to such of them as are present at the court-martial, by the president, or by some member of the court, or, except in the case of the judge-advocate, by the judge-advocate, if present, in the following form :—

(A) The form of oath for the judge-advocate shall be :

"You do swear that you will not, unless it is necessary for the due discharge of your official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD."

(B) The form of oath for an officer attending for the purpose of instruction shall be :

"You do swear that you will not divulge the sentence of this court-martial until it is duly confirmed ; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD."

(C) The form of oath for a shorthand writer shall be :

"You do swear that you will truly take down to the best of your power the evidence to be given before this court-martial, and such other matters as you may be required, and will, when required, deliver to the court a true transcript of the same. So help you GOD."

(D) The form of oath for an interpreter shall be :

"You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you GOD."

See Army Act 52 (2), and note to Rule 30.

For Form see Appendix II, Form of Proceedings, para. (2), p. 563.

A solemn declaration may be substituted under the circumstances specified in the Army Act, s. 52 (4).

Substitution of solemn declaration for oath.

28. Where a person is permitted to make a solemn declaration instead of being sworn, the form of declaration shall be as follows; that is to say:

(A) In the case of the president or other member of the court:

I, , do solemnly promise and declare that I will well and truly try the accused before the court according to the evidence, and that I will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and I do further solemnly promise and declare that I will not divulge the sentence of the court until it is duly confirmed, and further that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(B) In the case of the judge-advocate:

I, , do solemnly promise and declare that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(C) In the case of an officer attending for the purpose of instruction:

I, , do solemnly promise and declare that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(D) In the case of a shorthand writer:

I, , do solemnly promise and declare that I will truly take down to the best of my power the evidence to be given before this court-martial, and when required will deliver to the court a true transcript of the same.

(E) In the case of an interpreter:

I, , do solemnly promise and declare that I will, to the best of my ability, faithfully and truly interpret and translate as I shall be required to do touching the matter now before this court-martial.

(F) The declaration shall be made before some person authorised by these rules to administer the oath.

Permitted to make a solemn declaration.—This is permitted under the circumstances specified in the Army Act, s. 52 (4).

Giving wilfully false evidence on solemn declaration is punishable both by a military and civil court precisely as if the evidence were given on oath. See Army Act, ss. 29, 126 (2).

In case a solemn declaration is made, a note should be added to the proceedings, stating that the individual has made a solemn declaration instead of being sworn.

Form of oath in case of trial of several persons.

29. When the oath is administered to or the declaration made by the members of a court who are about to try several persons, the plural shall be substituted for the singular wherever required.

Several persons, see Rule 71.

Swearing of person according to the form of his religion.

30. (A) If any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so.

(B) In any case an oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience.

(c) For the purpose of both (A) and (B) the words "You do swear" and "So help me GOD" may be omitted or varied.

The oath will usually be administered as follows:—The person to be sworn will take the book in his right hand ungloved. The person administering the oath will repeat the oath, and, on the repetition being ended, the person to be sworn will say the words "So help me GOD," and kiss the book. The words of the oath should be said with distinctness and solemnity by the person administering it.

The book must be the New Testament, or some book containing it. An oath taken on the Book of Common Prayer containing the Epistles and Gospels is properly taken, and a person violating the oath may be convicted of perjury.

In the case of a witness, it is well, in the interest of truth, to prevent subterfuges such as omitting the words "So help me GOD," or kissing the thumb instead of the book, as dishonest witnesses fancy that thus they escape the guilt of perjury.

If the above ceremonies are not in accordance with the religion of the person to be sworn, the ceremonies of his religion must be followed as provided by this rule. If he objects to take an oath, and the court are satisfied of the sincerity of the objection, or if he is objected to as incompetent to take an oath, and the court are satisfied that the oath has no binding effect on his conscience, the court should permit him to make a solemn declaration in the form directed by Rule 28, or in the case of a witness, Rule 82, Army Act, s. 52 (4).

A person desiring to be sworn in the Scotch form will swear standing and holding up his right hand, and the oath will be in these terms: "I swear by Almighty GOD, as I shall answer to GOD at the Great Day of Judgment, that . . . . ." If a person has expressed his desire to be so sworn, no question as to his religious belief is to be asked, nor is he to be required to hold or kiss a Bible while being sworn. This provision is in accordance with the general law, 51 and 52 Vict., c. 46 (Oaths Act, 1888).

A Jew is sworn on the Old Testament, with his head covered. In the case of a Roman Catholic the book is closed and a cross is marked on the cover. A Mahommedan is sworn on the Koran, sometimes kissing it or placing it on his head. In the case of natives of India, the form varies according to race, caste, and the part of the country, and it will be well to follow the practice of the civil courts of the district, and if they receive an affirmation instead of an oath, to receive such affirmation.

Prosecution, Defence, and Summing-up.

Arraignment of accused.

31. (A) After the members of the court and other persons are sworn as above mentioned, the accused shall be arraigned on the charges against him.

(B) The charges upon which the accused is arraigned will be read to him, and he will be required to plead separately to each charge.

(A) *Arraigned.*—See Ch. V, paras. 49, 50.

The accused is usually arraigned by the president or the judge-advocate. For Form see Appendix II, Form of Proceedings, para. (3), p. 563.

Where two or more persons are tried together for the same offence, each is separately arraigned.

(B) The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president, Rule 17 (E), who will lay the charge-sheet before the court immediately before arraignment, and the charge-sheet will then be annexed to the proceedings. If any charge appears to the prosecutor to require amendment, he should communicate with the convening officer before the trial begins.

Objection by accused to charge.

32. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act, or is not in accordance with these rules.

See Rules 9–12. For Form see Appendix II, Form of Proceedings, para. (3), p. 563. An objection to the jurisdiction of the court must be raised by way of special plea, Rule 34.

If it appears that the accused is, by reason of insanity, unfit to take his trial, the court will find the fact specially, and he will be dealt with as provided in s. 130 of the Army Act and in Rule 57.

Amendment of charge.

33. (A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(B) If on the trial of any charge it appears to the court, at any time before they have begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with the amended charge after due notice to the accused.

(A) A mistake in name or description will only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that he is not prejudiced in his defence by the mistake having been made.

(B) The court may act under this paragraph whether the objection to the charge is taken by the accused or the judge-advocate, or by a member of the court, and either before or after the arraignment of the accused. (See Rules 23, 32.)

The witnesses.—That is, the witnesses on the substance of the charge, not witnesses as to objections to the officers, or with respect to a special plea to the jurisdiction.

If the addition, omission, or alteration can be met by means of a special finding under Rule 44 (as, for instance, by omitting some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material, or if the charge appears not to disclose an offence under the Army Act, or if any addition requires to be made to the charge, it will be safer for the court to adjourn and apply for the amendment of the charge.

Special plea to the jurisdiction.

34. (A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court; and, if he does so, and the court consider that anything stated in the plea shows that the court have not jurisdiction, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the accused and reply by the prosecutor in reference thereto.

(B) If the court overrule the special plea they should proceed with the trial.

(C) If the court allow the special plea, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such a decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(D) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision with respect to the plea, and proceed with the trial.

(A) *May offer a special plea to the general jurisdiction of the Court.*—A plea to the general jurisdiction, that is, to the right of the court generally, to try the accused on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the accused is brought before the court. Under the former he may plead, for example, that the court is improperly constituted, either in respect of the rank or number of the members, or that he is not amenable to the court, either as not being subject to military law or not subject to that description of court; as, for instance, in the case of a warrant officer being brought before a regimental court-martial. See above, note on Rule 23.

A plea relating to the particular charge, and raising the defence of

previous conviction or acquittal by a court-martial or civil court, summary punishment by the commanding officer, pardon of the offence or its condonation by the deliberate act of some superior authority, or the lapse of more than three years since the date of the offence, will be raised by way of plea in bar of trial, under Rule 36.

Evidence, when necessary, is heard in support of a plea to the jurisdiction, and if taken, must be taken on oath, like the evidence of other witnesses.

Evidence offered in support.—Includes the evidence of the accused and his wife. The accused may, notwithstanding that he has given evidence, address the court in reference to the plea.

(B) The confirmation of the finding, after a plea to the jurisdiction is overruled, will, without any special mention, necessarily have the effect of confirming the decision of the court overruling the plea. If, on the other hand, the confirming officer thinks that the plea to the jurisdiction, although it was overruled, is valid, he must refuse to confirm the finding of the court; but inasmuch as the court must in that case be considered as having had no jurisdiction to try the accused, the accused, in strict law, will not have been tried at all, and can, therefore, still be tried for the alleged offence.

(C) If the court allow the plea, the convening officer cannot overrule the finding, inasmuch as to do so would be to compel the court to try the accused, and thus render its members liable to a possible action for damages (see ch. viii, para. 40) after the expression of their own opinion that they had no jurisdiction. But the convening officer may convene another court.

(D) *May record a special decision.*—This in effect transfers the question to the decision of the confirming authority, who should act merely as if the plea had been overruled. See note to (B).

General plea of "Guilty" or "Not guilty."

35. (A) If no special plea to the general jurisdiction of the court is offered, or if such plea, being offered, is over-ruled, the accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(B) If an accused person pleads "Guilty," that plea shall be recorded as the finding of the court; but, before it is recorded, the president, on behalf of the court, should ascertain that the accused understands the nature of the charge to which he has pleaded guilty, and should inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead not guilty.

(A) *Plead intelligibly.*—If the accused pleads in some language not understood by the court, or inarticulately, he will not have pleaded intelligibly, and a plea of "Not guilty" will be entered.

(B) *Understands the nature of the charge.*—This direction is to prevent the accused pleading guilty under a misapprehension. For instance, a man charged with wilfully damaging his arms may, under a misapprehension, plead guilty, because the arms have been actually damaged, though not wilfully. In such a case the president must explain to him that if he did not do it wilfully, he must plead not guilty. So, again, on a charge for desertion, the plea "Guilty, but I intended to return" amounts to a plea of "Not guilty," as the intention not to return is (except as mentioned in ch. iii, para. 16) an essential element in the offence of desertion.

A plea of "Guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of those articles only, must be taken to have pleaded "Not guilty," as regards the remaining articles. An accused person arraigned upon a charge of receiving property knowing it to have been stolen, who pleads guilty "except that he did not know it was stolen," must be dealt with as having pleaded not guilty. So as regards any act of which the intention is an element, where the accused pleads guilty, but says that he "did not intend to do it," or words to that effect; so if the accused pleads guilty to two or more alternative charges, the president shall point out that he can only be guilty of one.

Generally, the president has, under this rule, the duty of advising the

accused to withdraw a plea of guilty, if it appears from the summary of evidence that he ought to plead not guilty.

If the accused pleads guilty, a statement that the requirements of Rule 35 (B) have been complied with must be recorded. See Form of Proceedings, App. II, para. (3), p. 563.

Difference in the procedure.—This is shown by Rule 37. Under that rule the accused, though able to call witnesses as to character, cannot call them in extenuation of the offence, except by leave of the court under Rule 37 (F) to prove what he alleges in mitigation of punishment. Consequently if he wishes, though admitting the offence, to show extenuating circumstances, he must plead not guilty, and cross-examine the witnesses for the prosecution, or call witnesses on his own behalf to prove the extenuating circumstances See ch. V, para. 54.

It must be recollected that there is nothing untrue in a person pleading not guilty, even though he committed the offence, as the plea merely amounts to an expression of desire to have a formal trial.

For example, if a man admits that he struck a non-commissioned officer, but wishes to show that it was done under circumstances of very great provocation, and does not therefore deserve severe punishment, he must plead not guilty; as if he pleads guilty he will not be able, either by cross-examination of the prosecutor's witnesses or by calling witnesses on his own behalf, to show the existence of such provocation, save as above mentioned under Rule 37 (F).

As to procedure where it appears from subsequent proceedings that the plea of guilty was entered under a misapprehension, see Rule 37 (D).

Plea bar.

36. (A) The accused at the time of his general plea of "Guilty" or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

(1) he has been previously convicted or acquitted of the offence by a competent civil court or by a court-martial or has been dealt with summarily by his commanding officer for the offence; or

(2) the offence has been pardoned or condoned by competent military authority; or

(3) the time which elapsed between the commission of the offence and the beginning of the trial was more than three years, or in the case of a civil offence proceedings in respect of which must be commenced within a shorter period than three years, more than that shorter period.

(B) If he offers a plea in bar the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered, and hear any address made by the accused and the prosecutor in reference to the plea.

(C) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(D) If the finding that a plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(E) If the court find that a plea in bar is not proved, they shall proceed with the trial, but such a finding shall be subject to confirmation like any other finding of the court.

The Army Act provides that a man shall not be liable to be tried for an offence of which he has been convicted or acquitted by a court-martial (s. 157), or by a civil court (s. 162 (6)), or for which he has been dealt with summarily by his commanding officer (s. 46 (7)), or which (with the exceptions of mutiny, desertion, or fraudulent enlistment) was committed more than three years before the date of the trial (s. 161). In general there is in civil courts

(except courts of summary jurisdiction) no limitation of time within which criminal proceedings for civil offences may be commenced, but in some few cases—e.g., carnal knowledge of a girl between 13 and 16—proceedings must be commenced within a shorter period than six months from the commission of the offence. See ch. VII, para. 37. In these cases proceedings must be commenced in the military courts within the shorter period.

This rule enables the accused to raise any of the above defences, as well as the defence of pardon or condonation, by way of a plea in bar of trial.

If the court find that the plea in bar is proved, they must adjourn, unless there is some other charge against the accused which is not affected by the plea, and if the finding is confirmed, the accused will not be tried.

If the court find that the plea in bar is not proved, they will proceed with the trial, but this finding will be subject to confirmation.

Evidence offered.—See note to Rule 34 (A).

Procedure after plea of "Guilty."

37. (A) Upon the record of the plea of "Guilty," if there are other charges in the same charge-sheet to which the plea is "Not guilty," the trial will first proceed with respect to those other charges, and, after the finding on those charges, will proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Not guilty" on each alternative charge to which the accused has not pleaded "Guilty."

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, or if there is no such summary or abstract, shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty."

(C) After evidence has been so taken, or the summary or abstract of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.

(D) If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty," and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) will take place when the findings on the other charges in the same charge-sheet are recorded.

(F) When the accused at any court-martial states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

(A) For instance, in the illustration of charge in Appendix I, p. 543, the charges are not alternative, and therefore, if the accused pleads guilty to one charge and not guilty to the other charge the court should proceed to try him on the remaining charge. In the case of alternative charges a man cannot be guilty of all of them. For example, in Form 59, p. 552, he cannot have committed the offence of making away with, and also of losing by neglect, the same articles of his regimental necessaries. If, therefore, he pleads guilty to one charge, the court should usually enter a finding of not guilty on the other, as inconsistent with the one to which he has pleaded

guilty; but if the summary of evidence shows clearly that he made away with the articles, and he pleads guilty only to losing them by neglect, the court should try him for the making away with his necessaries, inasmuch as it is a more serious offence than losing by neglect, and a soldier ought not, by pleading guilty to the smaller offence, to escape punishment for the greater. See also Memoranda for Guidance of Courts-Martial, p. 582.

(B) and (D) *Any statement.*—If it appears from this statement or otherwise that the accused did not understand the effect of his plea of "Guilty," it will be the duty of the court to record a plea of "Not Guilty," and to proceed with the trial. (See notes to Rule 35.) Or, again, if he alleges very great provocation for the offence, it may be desirable to record a plea of "Not Guilty" in order to allow the existence of such provocation to be proved in the ordinary way.

If a court fail to observe this rule and treat such a plea as mentioned in the note to Rule 35 (B), in the case of desertion, as a plea of "Guilty," the confirming officer should refuse confirmation; he can then order a new trial. See Army Act, ss. 54 (6), 157, and notes. If he confirms, the whole proceedings are nevertheless invalid.

In the case of a plea of "Guilty," the accused will always be asked whether he has any witnesses to call as to character, see (C).

For Form see Appendix II, Form of Proceedings, para. (4), p. 564.

If evidence is taken under (B), the accused can cross-examine the witnesses both in extenuation of the offence with a view to the mitigation of punishment, and as to character. See Rule 39, and for Form, Appendix II, Form of Proceedings, para. (4), p. 565.

(C) It will be observed that the accused cannot, except by permission of the court under (F), call witnesses in extenuation of the offence and consequent mitigation of punishment.

(F) The court should always, if the accused requests it, allow witnesses to be called, to prove any statement made by him in mitigation of punishment.

(C) and (F) *Call witnesses.* See Rule 80 (1).

Withdrawal of plea of "Not guilty."

38. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty," and plead "Guilty," and in such case the court will at once, subject to a compliance with Rule 35 (B), record a plea and finding of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 37.

If the accused proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under Rule 35.

Plea of "Not guilty" and case for the prosecution.

39. After the plea of "Not guilty" to any charge is recorded, the trial will proceed as follows:—

(A) The prosecutor may, if he desires, make an opening address.

(B) The evidence for the prosecution shall then be taken.

(C) If it should be necessary for the prosecutor to give evidence for the prosecution, he should give it after the delivery of his address, and he must be sworn, and give his evidence in detail.

(D) He may be cross-examined by the accused, and afterwards may make any statement which might be made by a witness on re-examination.

For Form see Appendix II, Form of Proceedings, para. (5), p. 565.

(A) In cases of any complication, such as cases of embezzlement, the prosecutor should always make an opening address for the purpose of explaining the charge, and enabling the court better to follow the evidence. This is the only object of the address. As a rule the address of the prosecutor should be in writing. See further Rule 60, and note.

(B) As to the evidence, see Rules 81 to 86. The evidence will be taken by question and answer, Rule 83.

All facts essential to constitute the offence charged must be proved; *e.g.*, on a charge of making false accusations, &c., it is necessary to prove—

(1) That the accusation was made against an officer or soldier by the accused;
(2) That it was false;
(3) That the accused made it knowing it was false.

Respecting the duty of the president, see Rule 59, and note.

(C) The prosecutor should never himself give evidence *before* the finding unless it be to prove a date or other formal matter, or produce documents; but even formal matter should not be left to be proved by him, if it can possibly be helped. The production of documents which are in his possession is not open to the same objection.

The only possible exception to the rule of the prosecutor not giving evidence will be occasionally on active service, where the trial cannot be postponed, and the same officer is a material witness and also the only available officer for the duty of prosecutor. In these exceptional cases, it is essential that his sworn statements as a witness should be kept quite distinct from his statements made as prosecutor. Consequently he must give his evidence before any other witness, and in detail, and must not, after delivering an address, be allowed to swear generally to the statements contained in it.

If several cases are tried before the same court on the same day, and the same person is prosecutor in more than one such case, he must, if he gives evidence, be sworn as a witness in each case. It is not sufficient that he has been previously sworn, as the oath must be taken in the presence of the accused in respect of whom he gives evidence.

Documentary evidence will be read by the judge-advocate, or by the president, or by some member of the court, and will be entered on the proceedings.

When counsel appears on behalf of the prosecutor, (C) and (D) do not apply. See Rule 89 (D).

Procedure where no witness to facts (except accused) called.

40.—(1) At the close of the evidence for the prosecution the accused shall be told by the court that he may, if he wishes, give evidence as a witness, but that if he gives evidence he will subject himself to cross-examination.

(2) The accused will then be asked whether he wishes to give evidence as a witness himself, and whether he intends to call any witnesses to the facts of the case other than himself.

(3) Unless the accused states that he intends to call witnesses to the facts of the case other than himself the procedure will be as follows :—

(A) The accused, if he wishes to do so, will give evidence as a witness.

(B) At the close of the evidence of the accused, or, if the accused has not given evidence, then immediately after the accused has been asked the question mentioned in (2) the prosecutor may address the court a second time for the purpose of summing up the evidence for the prosecution and commenting on the evidence of the accused (if any).

(C) The accused will then be asked if he has anything to say in his defence and may address the court in his defence.

(D) The accused may call witnesses as to his character.

(E) The prosecutor may produce, in reply to the witnesses as to character, proof of former convictions and entries in the conduct book, but he may not again address the court.

(1) The information required to be given to the accused will be given by the judge-advocate, or, if there is not one, by the president. Great care should be taken to explain to the accused, especially if he is not defended by counsel, that he need not give evidence unless he wishes, and what his position will be if he gives evidence himself. (See also notes to Rules 80 and 94.)

(2) The questions will be put by the judge-advocate, or, if there is not one, by the president. The accused must be informed of the difference between witnesses to facts and witnesses to character only. In particular it must be explained to the accused that if he wishes to produce any evidence (other than his own evidence) in extenuation of the offence, with a view to the mitigation of punishment, he will not have a right to do so if he only calls witnesses to character.

As to power of court to allow a person who has pleaded guilty to call witnesses to prove a statement of the accused in mitigation of punishment, see Rule 37 (F).

Further the accused must be told that his wife cannot be called as a witness unless he applies to the court to have her called (as to the exceptions to this rule, see notes to Rule 80). For forms see Appendix II, Form of Proceedings, paras. (6) and (7), pp. 567–570.

"*Witnesses to the facts of the case.*" Every witness except a witness to character only is a witness to the facts of the case. Accordingly, a witness as to extenuating circumstances is a witness to the facts of the case.

3 (A). If the accused is the only witness to the facts of the case he is to give his evidence directly after the close of the case for the prosecution. No questions may be put to the accused as to his character except in the circumstances specified in Rule 80. (As to the duty of the president and judge-advocate towards the accused, see Rules 59 (B) and 103 (G) and (H) and notes.)

(B) The observations with respect to the opening address of the prosecution (see note to Rule 60 (A)) apply equally to his second address. In summing up the evidence the prosecutor must confine his remarks to the evidence. He may comment on the evidence given by the accused, but must not comment on the fact that the accused or his wife has not given evidence. He must not keep back or gloss over any weak points of the evidence of the prosecution, or the strong points of the evidence for the defence; in fact, he should understate rather than overstate that view of the facts which it is his duty to bring before the court on behalf of the prosecution; still less must he state any new fact relating to the case, which has not been given in evidence. Any deviation in these respects on the part of the prosecution, or any want of moderation, may lead to the proceedings being invalidated. The court should, so far as possible, stop the prosecutor transgressing in any of these respects. The accused, on the other hand, has the privilege, whether he has given evidence himself or not, of making statements in his address unsupported by evidence, and when those statements are made on the personal knowledge of the accused, they must be dealt with as evidence, though not on oath. But if the accused has given evidence himself, any statement which could have been made on oath can hardly have much weight with the court if not so made. See also note to Rule 43 (A).

(C) The fact that the accused has given evidence himself will not deprive him of his right of addressing the court, unless he is defended by counsel or by an officer acting as counsel: see Rule 94 and note.

(E) This evidence can only be adduced before the finding in cases where the accused calls witnesses to character or obtains from the prosecutor's witnesses evidence of his good character.

Procedure where witnesses are called for defence.

41. If the accused states that he intends to call witnesses to the facts of the case, other than himself, the procedure will be as follows:—

(A) The accused will be asked if he has anything to say in his defence, and may address the Court in his defence.

(B) The accused may himself give evidence as a witness, and may call his other witnesses, including witnesses as to character.

(C) After the evidence of all the witnesses for the defence has been taken, the accused may again address the Court, and the time at which his second address is allowed is in these rules referred to as the time for the second address of the accused.

(D) The prosecutor will be entitled to address the Court in reply.

For form, see Appendix II, Form of Proceedings, para. (8), p. 570.

(A) As to the questions to be addressed to the accused, see notes to Rule 40. The utmost liberty consistent with the interest of parties not before the court, and with the dignity of the court itself, should be allowed to the accused in making his defence (see Rule 60 (C)), and the court should, if necessary, adjourn to allow him time for its preparation. If the accused has expressed an intention of giving evidence himself, he should be warned against making statements as to facts within his own knowledge, which he will not be able to substantiate on oath. As to friend of accused and counsel, see Rules 87–94.

(B) The accused is entitled to give his evidence at any time whilst the evidence for the defence is being heard, and even though he has previously

stated that he did not intend to give evidence himself. But the accused should usually give his evidence before any other witnesses for the defence. The accused should be warned that if he gives his evidence after hearing the evidence of other witnesses for the defence, the value of his evidence may be considerably discounted. The prosecutor would be justified in commenting on the fact that the accused had chosen to give his own evidence after hearing the evidence of his other witnesses.

Summing-up by judge-advocate.

42. (A) The judge-advocate, if any, will, unless he and the court think a summing-up unnecessary, sum up in open court the whole case to the court.

(B) After the judge-advocate has spoken, no other address shall be allowed.

(A) The summing-up of the judge-advocate ought, like that of a judge to a jury, to be perfectly impartial. See Rule 103 (G), (H). In simple cases a summing-up is unnecessary; but even where the facts are simple, difficult questions may sometimes arise as to the particular offence which the acts constitute in law, and in that case the judge-advocate should give his opinion on the legal point. The judge-advocate has, it will be observed, a right to sum-up whenever he considers a summing-up necessary. The summing-up need not be in writing.

The judge-advocate may in his summing-up comment on the fact that the accused has not applied to give evidence himself or to call his wife as a witness: whether he does so or not must be left to his individual discretion in each case (see *Kops* v. *The Queen*, L.R. [1894] A.C. p. 653; *R.* v. *Rhodes*, L.R. [1899] 1 Q.B. 77.) The judge-advocate may also comment on the fact that the accused has chosen to give his evidence after hearing the evidence of other witnesses for the defence.

If the summing-up is unnecessary, an entry to that effect must be made in the proceedings. See Appendix II, Form of Proceedings, para. (9), p. 572.

Finding and Sentence.

Consideration of finding.

43. (A) The court will deliberate on their finding in closed court.

(B) The opinion of each member of the court will be taken separately on each charge.

(A) *Closed court.*—See Rule 63.

The president may commence the deliberation on the finding by a statement of the questions to be considered, and the order in which they are to be considered, and the bearing of the evidence on those questions, and other members of the court may comment on the evidence, and the truth or otherwise of the defence.

The great points for all the members to keep before their minds are (1) that according to one of the fundamental maxims of English law a man is to be presumed innocent until he is proved guilty, and (2) that they have to find *according to the facts proved in evidence*; and to this end they must carefully separate mere statements made by the prosecutor or by the accused, when not giving evidence on oath, from facts proved by the respective witnesses. Some weight may, however, be allowed to a statement of the accused, even though not given on oath. For instance, if the statement would not have been admissible as evidence from the accused, or if it is corroborated incidentally, or otherwise, by evidence, or if the accused has been unable to procure a witness who might have given evidence on the point, considerable weight may be allowed to the statement. It will, however, be hardly possible to attach any weight to a statement not on oath which the accused might have made on oath and subjected to the test of cross-examination.

An accused person, though he gives evidence himself, will have the same right of addressing the court as he had before the passing of the Criminal Evidence Act, 1898. But if an accused person defended by counsel or by an officer acting as counsel gives evidence himself he will not be able to make a statement in addition to his evidence. See Rule 94.

It must further be borne in mind that the case for the prosecution, in order to justify a conviction, must, in spite of the new right of the accused to give evidence himself, be as conclusive as heretofore. It will not be sufficient for the prosecutor to make out a *primâ facie* case against the accused and then to say "Let the accused go into the box and disprove my case if he can." In such a case it would be the duty of the court to enter an acquittal just as if the accused had no power to give evidence himself.

Where the proceedings are voluminous, the judge-advocate should be prepared with such notes as may assist the members in referring to any particular part of the evidence. He will not offer any opinion except on legal points. (See Rule 103.)

It is competent to the court, if they think fit (see Rule 86 (D)), to call or recall a witness for the purpose of putting any question deemed essential; but any such witness must be examined in the presence of the parties, and all questions put to him, whether by a member of the court, the prosecutor, or accused, will be put through the president.

(B) As to taking opinions, see Rule 69, and note.

The opinions will be taken separately on each charge, and the court, if they think that the offence stated in any charge is not proved, must acquit the accused on that charge, irrespective of any other charge; but where the charges are *alternative*, the conviction under one necessarily involves an acquittal under the other charges, as, for instance, in the example in Form 59, among the further illustrations of charges, p. 548. If the accused is convicted under the charge of having made away with certain articles of his regimental necessaries, he is necessarily acquitted of having lost them by neglect.

Form and record of finding

44. (A) The finding on every charge will be recorded and, except as mentioned in these rules, will be recorded simply as a finding of "Guilty," or of "Not guilty," or of "Not guilty and honourably acquit him of the same."

(B) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty," record a special finding.

(C) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein.

(D) Where the court are of opinion as regards any charge that the facts proved do not disclose an offence under the Army Act, the court will acquit the accused of that charge.

(E) If the court doubt as regards any charge whether the facts proved show the accused to be guilty or not of an offence under the Army Act, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, and, if necessary, adjourn for that purpose.

(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge; but if the court think that the facts so proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, then they may, either before recording a finding on those charges refer to the confirming authority for an opinion, and, if necessary, adjourn for the purpose, or they may record a special finding, stating the facts which they find to be proved, and stating that they doubt whether those facts constitute in law the offence in such one or another of the alternative charges as are specified in the finding.

(A) For form see Appendix II, Form of Proceedings, paras. (10) and (11), p. 573. Under s. 54 (3) of the Army Act, an acquittal on a charge requires no confirmation. For procedure where the finding is "Not guilty" on all the charges, see Rule 45. The finding of honourable acquittal may be recorded in the case of non-commissioned officers and privates as well as of officers, but is not to be recorded as a matter of course upon an acquittal. A finding of honourable acquittal is incorrect in a case where the charge does not affect the honour of the accused person.

Another case in which an honourable acquittal is incorrect is thus pointed out by the Duke of Wellington (Well. Desp. vol. 5, 221–2):—

"It is difficult and needless at present to define in what cases honourable "acquittal is peculiarly applicable; but it must appear to all persons to be "objectionable in a case in which any part of the transaction which has been "the subject of investigation before the court-martial is disgraceful to the "character of the party under trial. A sentence of honourable acquittal by "a court-martial should be considered by the officers and soldiers of the "army as a subject of exultation, but no man can exult in the termination "of any transaction, a part of which has been disgraceful to him; and "although such a transaction may be terminated by an honourable acquittal "by a court-martial, it cannot be mentioned to the party without offence, or "without exciting feelings of disgust in others; these are not the feelings "which ought to be excited by the recollection and mention of a sentence of "honourable acquittal."

(B) For Form of special finding, see Appendix II, Form of Proceedings, para. (10), p. 573; and for Form of Acquittal, para. (11), p. 573. In case of immaterial variation, the finding may simply be recorded as "Guilty"; as, for example, if the accused is found to have made away with his regimental necessaries on the 25th, and not on the 26th of August, or to have made away with two pairs of boots, and not one pair of boots, the variation is immaterial, and he may simply be found guilty of the charge.

(C) Thus, if the court find that the facts stated in the charge are only proved in part, they may find the accused guilty, subject to the exceptions or variations. The facts, however, which they find to be proved, subject to the exceptions or variations, must amount to the substance of the offence actually charged, otherwise the court should acquit the accused. If, for example (see Form 59 among the further illustrations of charges, p. 548), they find that the accused made away with one brush, but not the pair of boots, the other brush, and the shirt, they may find the accused guilty, with the exception that he did not make away with the pair of boots, one brush, and the shirt. If, on the other hand, they find from the evidence that he did not make away with a pair of boots, two brushes, or a shirt, but did make away with other regimental necessaries, they must acquit the accused; or if they find that he lost the articles aforesaid, but did not make away with them by sale or otherwise, they must acquit him of the charge of making away with them. So, again, if he is charged with being absent without leave, and the particulars specify an absence from the 20th to the 30th of June, and the evidence prove an absence from the 21st to the 30th of June, the court may find the accused guilty with the variation of the 21st for the 20th. But if the evidence proves an absence from the 20th to the 30th of July, the difference is so material as to amount to a new charge, and the court must acquit the accused, and he can be tried on the new charge for the absence in July. See Rule 11 (D) note.

(D) If, for example, a man is charged with receiving, knowing it to be stolen, the money of a comrade, and the court are of opinion that, although the money had actually been stolen, the accused was unaware of the fact, they must acquit him, inasmuch as the act of receiving stolen money, apart from guilty knowledge, would not amount to an offence.

(E) This paragraph provides that, where the court doubt as to whether the facts proved constitute in law the offence charged, the court may refer to the confirming authority. For instance, if they find that the accused took certain sums of money, but doubt whether the circumstances under which he took them do or do not constitute embezzlement, or an offence of a fraudulent character, they may state the facts which they find proved, and refer to the confirming authority for an opinion as to whether they constitute the offence. The court, however, cannot refer to the confirming authority for any opinion as to the facts, but merely as to the legal results to which those facts amount.

(F) The special findings before mentioned relate only to the *particulars* in the charge. A special finding can in no case (except under s. 56 of the Army Act as mentioned below) alter the statement of the offence in the charge; but under this paragraph, if there are alternative charges, and the court doubt whether the facts proved amount in law to one charge or the other, and they do not think it advisable to refer to the confirming authority for an opinion, they can record a special finding, and thus leave it to the confirming authority under Rule 55 (A) to determine whether the facts found by the court constitute in law the one offence or the other. For example, if on a charge for insubordinate language, they find that the accused used the language charged, but doubt whether the language is such

or was used under such circumstances as to be in law an offence within s. 8 of the Army Act, they may record a special finding, setting out the language they find to be used, and the officer to whom, or the circumstances under which, it was used, and state that they doubt whether the use of the language under the circumstances is insubordinate or not. The confirming authority will then decide, under Rule 55 (A), whether such a finding amounts to a conviction on any of the charges.

The only other description of special finding which affects the statement of the offence is one not mentioned in the rules, but allowed by the Army Act (s. 56). That section enables an accused person charged with an offence mentioned in the first column of the following table, to be found guilty of the offence of a similar character mentioned opposite to that offence in the second column of the table, where the evidence shows that the latter offence, and not the precise offence charged, has been in fact committed. For illustration of the table, see note to s. 56 of Army Act.

TABLE.

A Person charged with	May be found guilty of
(*a*) Stealing money or property.	Embezzlement, or fraudulently misapplying money or property.
(*b*) Embezzlement	Stealing, or fraudulently misapplying money or property.
(*c*) Desertion	Attempting to desert, or being absent without leave.
(*d*) Attempting to desert... ...	Desertion, or of being absent without leave.
(*e*) An offence committed under circumstances involving a higher degree of punishment.	The same offence as being committed under circumstances involving a less degree of punishment.

Proceedure on acquittal.

45. (A) If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court, and the accused will be released in respect of those charges.

(B) The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted at once in like manner as is directed by these rules in the case where the findings require confirmation.

(A) *Announced in open court.*—This is required by Army Act, s. 54 (3).

For Forms see Appendix II, Form of Proceedings, para (11), p. 573.

In respect of those charges.—Consequently the accused may be kept in custody and tried on the charges of any other charge-sheet, or on any other charge which is in course of investigation by his commanding officer.

(B) See Rules 50 and 97.

Proceedure on conviction.

46. (A) If the finding on any charge is "Guilty," then, for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, may take evidence of and record the character, age, service, rank, and any recognized acts of gallantry or distinguished conduct, of the accused, and the length of time he has been in arrest or in confinement on any previous sentence, and any deferred pay, military decoration, or military reward, of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit.

(B) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting the accused person, and identifying the accused as the person referred to in that summary.

(C) Evidence on the part of the prosecutor upon the above matters should not be given by a member of the court.

(D) The accused may cross-examine any such witness, and may call witnesses to rebut any such evidence; and if the accused so requests, the regimental books, or a duly certified copy of the material entries

therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

When all the evidence on the above matters has been given, the accused may address the court thereon.

(E) If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the court renders him liable to any exceptional punishment in addition to that to be awarded by the sentence of the court, it will be the duty of the prosecutor to call the attention of the court to the fact, and it will be the duty of the court to enquire into the nature and amount of such additional punishment.

(A) For Form see Appendix II, Form of Proceedings, para. (12), p. 573.

The court will always take evidence as to character, unless the circumstances render it impracticable so to do, in which case they will record the reasons for such impracticability in the proceedings.

It must be recollected that it is not competent for the court to take verbal evidence of the accused being a *bad* character. The badness of his character must be proved by former convictions and entries in the conduct book, and not by the expression of any opinion to that effect by witnesses, although such opinion is admissible as evidence of *good* character. However, if the accused calls evidence of good character, the prosecutor may cross-examine those witnesses, with a view to test their veracity, and thereby indirectly bring out evidence of bad character. If the accused himself gives evidence, the prosecutor may in such cases cross-examine him as to character (see Rule 80 and note).

Witnesses in favour of the character of the accused will be called, as a rule, either as part of his defence, or after his address and before the finding; but under this rule (D) may be called to rebut the evidence given by the prosecutor after the finding.

In cases of alleged desertion, the fact of the accused having surrendered or been apprehended should not be left until after the finding; it is one of the material facts of the case, and as such ought to be proved by the prosecutor; it may have some bearing on the question of whether the accused intended or not to return.

The court will not, when the accused belongs to the regular forces, take evidence of any conviction while he was a civilian. But convictions by a civil court while the accused is a soldier may be given in evidence although the offence was committed while he was in a state of absence or desertion. (K.R., para. 553.)

Evidence of expenses, loss, damage, or destruction will be taken in the course of the trial, as Rule 11 (F) provides that the facts justifying any deduction from pay are to be stated in the particulars. In case such evidence has not been taken, there is nothing to prevent the court taking it after the finding, if necessary. In case of damage caused by an offence, the cause and effect must be closely related in order to warrant a sentence of stoppages. Thus an accused person would not for this purpose be said to have caused damage to a military policeman's clothes because the policeman fell down and damaged them while in pursuit of the accused when endeavouring to escape.

If two or more persons are convicted of a joint offence, each of them may be ordered to pay the whole amount of the compensation for any expenses, loss, damage, or destruction occasioned by that offence. Each of them is liable to pay the whole compensation in default of the other. If both contribute to the payment, proviso (*b*) to s. 138 of the Army Act (see note) will prevent either of them being charged with an undue amount, as that proviso forbids deductions more than sufficient to make good the compensation.

"*Military decoration*" is defined by the Army Act, s. 190 (18), to mean any medal, clasp, good conduct badge, or decoration; and "*military reward*" is defined (s. 190 (19)) to mean any gratuity or annuity or long service or good conduct, and also to include any good conduct pay or pension, or any other military pecuniary reward.

Can sentence him to forfeit.—See Army Act, s. 44 (11) (12). The court cannot take evidence with respect to any decoration of which the court cannot order the forfeiture, as, for example, the Companionship of the Bath or the Victoria Cross. The object of taking this evidence and evidence of the rank of the accused is for the purpose of enabling the sentence to be awarded correctly. See Rule 47.

(B) *Regimental books.*—A statement containing a summary of the entries against the name of the accused in those books, with a statement as to his age, service, rank, &c., is to be produced, and verified by a witness as being correctly extracted from the regimental books; a witness must also identify the accused as being the person referred to in such statement. This witness should usually be the adjutant or some other officer. There is nothing to prevent the prosecutor being the witness, and the remarks in the note to Rule 39 (C) do not apply. The prosecutor must, however, be sworn like any other witness; it is not sufficient that he should have been sworn as a witness before the same court on the same day in the course of the trial of some other person. If the accused challenges the correctness of the statement, the regimental books, or a duly certified copy thereof, must be produced, and the court must compare the statement with the books. See (D).

(D) The accused is entitled to give evidence himself to rebut the evidence given by the witnesses of the prosecution as to his character; but if he does so, he will render himself liable to be cross-examined as to character. See Rule 80 and note.

Duly certified copy.—This means a copy certified as provided by the Army Act, s. 163 (*h*), by the officer having the custody of the book.

Any previous convictions of the accused may be proved by the production of a verbatim extract from the regimental books, certified by the officer in charge of those books (Army Act, s. 163 (*g*), K.R., paras. 1916–1921). But a conviction by a civil court may be proved by the production of a certificate (Army Act, s. 164) of the conviction, and must be so proved if there is reason to doubt the correctness of the entry of the conviction in the regimental books. A witness must always be called to prove the identity of the accused with the person stated in the extract or certificate to have been convicted.

The witness producing the statement referred to in (B) and identifying the accused should be the adjutant or some other officer, and the witness may be cross-examined by the accused.

(E) *Exceptional punishment.*—This means such punishment as forfeiture of corps pay (*see* Pay Warrant, 1907, arts. 789, 790), or prolongation of the term of service in the case of militiamen (*see* Militia Act, 1882, s. 27 (*c*)).

Mode of forfeiting seniority of rank of officer or non-commissioned officer.

47. Where the court desire to sentence an officer, or a non-commissioned officer, to forfeit seniority of rank, they may sentence him to take rank and precedence in his corps, or in the army, or in both, as if his appointment to the rank or ranks held by him, and specified in the sentence, bore the date of some day or days specified in the sentence, and later than the actual date of his said appointment.

See Army Act, s. 44, *f*, and *m*, and Rule 46.

Under this rule an officer whose commission as captain was dated on the 1st of January, 1897, may be sentenced to take rank in the army and in his regiment as if his commission bore date the 1st of March, 1899. If, for instance, it is wished to reduce a captain to the bottom of the list in his regiment he may be sentenced to take rank and precedence in his regiment and in the army as if his commission bore date on the day which is specified in the sentence, and which is the next day to the date of the commission of the junior captain of the regiment. If his rank in the army differs from that in his regiment the sentence may apply to the former only. See Appendix II, Form of Proceedings, para. (12), pp. 576, 577.

Sentence.

48. The court shall award one sentence in respect of all the offences of which the offender is found guilty, and that sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

For Form see Appendix II, Form of Proceedings, para. (12), p. 576.

The court will award such sentence as they think the offender ought to suffer, and the judge-advocate or president will enter it at once in the proceedings. For observations on the duty of the court in awarding sentence see ch. V, paras. 78–88, and K.R., para. 583.

The object of the latter portion of this rule is to prevent legal objections to the sentence. If, for example, the offender has been convicted on a charge of having made away with his regimental necessaries, for which the maximum punishment under the Army Act is imprisonment, and also on a charge of desertion on active service or after a previous conviction, which is punishable with penal servitude, the court may pass a sentence of penal servitude, and that sentence will, under this rule, be valid because justified by the second charge, although not justified by the first charge. (See also Rules 54 and 55.) Assume that a soldier charged with striking his superior officer and also with desertion, is tried and found guilty of both charges, and sentenced to penal servitude for seven years. This rule directs that such sentence shall be deemed to have been given in respect of the second charge, which carries penal servitude as a punishment, and not in respect of the first charge, which carries only imprisonment as a punishment. But assuming that the first charge had carried penal servitude, as it would have done if the offender had been on active service, then the sentence would have been deemed to have been given in respect of both charges, and not in respect of the last only. This rule will apply whether the charges on which the offender has been tried are in one charge-sheet or in several charge-sheets.

With respect to the opinions on the sentence, see Rule 69 and the note thereon.

The sentence must, of course, be authorised by the Army Act (*see* s. 44), and the court cannot, for example, sentence an offender to restore stolen property; though an order for restoring property found in his possession may, under s. 75 of the Army Act, be made by the confirming authority, or if there is a Commander-in-Chief, by him.

Recommendation to mercy.

49. (A) If the court make a recommendation to mercy they shall give their reasons for their recommendation.

(B) If the court recommend any restoration of service under section 79 of the Army Act the recommendation, with the reasons for it, shall be entered in the proceedings.

(C) The number of opinions by which a recommendation mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

(A) A recommendation to mercy will be appended to the sentence, and be embodied in the proceedings before they are signed by the president. See Army Act, s. 53 (9) and note.

For Form see Appendix II, Form of Proceedings, para (12), p. 578.

Signing and transmission of proceedings.

50. Upon the court awarding the sentence, the president shall date and sign the sentence, and such signature shall authenticate the whole of the proceedings, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

For Form see Appendix II, Form of Proceedings, para. (12), p. 578; and see Rule 97.

It is essential that the sentence be signed by the president, as under the Army Act, s. 68, the term of penal servitude, imprisonment, or detention commences on the day on which the sentence and proceedings were signed by the president. His signature after the sentence will authenticate all the proceedings of the trial.

The judge-advocate (if any) will sign after the president.

As a rule, certified copies of original documents produced in evidence by the prosecutor, and not the originals themselves, will be annexed to the proceedings. K.R., para. 581.

Confirmation and Revision.

Procedure of confirming officer.

51. (A) In the case of a finding which does not require confirmation, the confirming officer shall not make any remarks in the proceedings, but if he thinks that anything in the case requires further attention he shall report it to superior authority as directed by His Majesty's regulations.

(B) In the case of findings or sentences which require confirmation the confirming authority—

(1) May direct the re-assembly of the court for the revision of the finding or sentence, or either of them, stating the reasons for revision; and

(2) Upon receiving the proceedings, whether original or revised, may confirm or refuse confirmation, and may add any remarks on the case which the authority may think fit, and the confirmation and remarks shall be entered in and form part of the proceedings.

(A) As to remarks by confirming officer, see K.R., paras. 589, 590.

(B) The confirming authority can send back a finding and sentence, or either of them, for revision once, but not more than once; and where the finding only is sent back for revision, the court have power, without any direction, to revise the sentence also (Army Act, s. 54 (2), Rule 52 (B)).

A finding of insanity, in which case there is no sentence, may be sent back for revision.

A confirming officer cannot send back a part of a finding or sentence for revision; if he thinks that part only requires revision on account of invalidity or otherwise, he should return the whole, pointing out the part which he considers to require revision.

As under the Army Act, s. 54 (2), the confirming authority cannot recommend the increase of a sentence, nor can the court, on revision, for any reason increase the sentence previously awarded, the object of revision will be mainly either to cure defects in the proceedings of the court where the offender has been found guilty, or to give the court an opportunity of acquitting or passing a more lenient sentence on, the offender. If, however, the sentence is wholly illegal, it is null (see note to Rule 56 (A)), and the court, on revision, have the same power of sentence as if they had passed no sentence at all; as, for example, (i) if a regimental court sentenced a soldier to be discharged with ignominy, or (ii) a court sentenced a serjeant to be reduced to the rank of lance-corporal, and the confirming officer sent back the sentence for revision as being null, the court may pass a sentence of (i) detention or (ii) reduction to the rank of corporal, or to the ranks.

See generally as to the duty of a confirming officer where the proceedings are illegal or irregular, K.R., para. 591.

Confirmation should be effected simply by the word "confirmed." The word "approved" should not be added. Any remarks should be added after the confirmation, and be separate from it. See Form in Appendix II, Form of Proceedings, para. (14), p. 579. 110 Arty. 6625

Original or revised.—"Original" here means the proceedings of the court where no revision has taken place, whether from the finding or sentence not having been sent back for revision or from a revision not having taken place, in consequence of the dissolution of the court as mentioned in the note to Rule 52 (A). "Revised" applies to the proceedings after the court have re-assembled for revision.

The confirming officer can always withhold confirmation wholly or partly, and refer to superior authority (Army Act, s. 54 (5)), and he must so refer if he has been a member of the court-martial (s. 54 (4)).

52. (A) Where the finding or sentence is sent back for revision, the court should re-assemble in closed court, and shall not receive any further evidence. Revision.

(B) Where the finding is sent back for revision, and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding, and, if the new finding involves a sentence, pass sentence afresh.

(C) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(D) After revision the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

(A) *Closed court*, see Rule 63. The court should re-assemble at the time mentioned in orders, which should be as soon as practicable.

As the court cannot receive any further evidence whatever (Army Act, s. 54 (2)), they cannot hear any further address for either the prosecution or the defence.

When the court is assembled for revision, it is technically the same court. Consequently, if it is reduced by death, inability to attend, or otherwise, below the legal minimum (see notes to Rules 16–19), it is dissolved, and cannot re-assemble for revision, and the proceedings must be returned, without any entry thereon, to the confirming authority. Or, again, if the president is dead or unable to attend, a new president, if the senior member of the court is of sufficient rank, must be appointed by the convening authority. See s. 53 (2) of the Army Act.

(B) Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence. See Army Act, s. 54 (2) and note to last rule.

If the new finding involves a sentence.—If the finding was insanity, or was an acquittal, no sentence will be involved. For Form see Appendix II, Form of Proceedings, para. (13), p. 578.

(D) For Form see Appendix II, Form of Proceedings, para. (13), p. 579. See Rule 97, and K.R., paras. 592, 594–596.

Promulgation.

53. The charge, finding, sentence, and confirmation of a court-martial shall be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service.

As to promulgation, see K.R., para. 593. For form of promulgation, see Memoranda for Guidance of Courts-Martial, p. 584.

The finding of acquittal on all charges is directed by the Army Act, s. 54 (3), to be pronounced at once in open court. No further promulgation is required. In every other case the charge, finding, sentence, and confirmation must, under this rule, be promulgated. Consequently, if the finding on some of the charges is acquittal, and on others conviction, the finding of acquittal must be promulgated, together with the finding of conviction; and a finding of conviction, though not confirmed, will still be promulgated.

In the absence of any direction by the confirming authority, the usual custom of the service will be followed, but a written notice to the offender of the charge, finding, sentence, and confirmation will be sufficient promulgation to satisfy this rule.

As to the execution of sentence, see ch. V, paras. 100–3, and generally as to the disposal of soldiers under sentence, K.R., para. 600, *et seq.*

Under the Army Act, s. 53 (9), a recommendation to mercy must be promulgated and communicated to the offender, together with the finding and sentence. The confirming officer may direct observations recorded by him to be promulgated, either with the proceedings, or as he may think most desirable. K.R., para. 589.

If a sentence of penal servitude, imprisonment, or detention is confirmed, then, in default of any committal by superior authority, the commanding officer of the offender, as soon as may be after the promulgation of the sentence, will sign the order for his committal to some prison or detention barrack in accordance with any general or special instructions he has received from superior authority. K.R., paras. 602, 608. As to commitment abroad, paras. 603, 609–612.

Mitigation of sentence on partial confirmation

54. (A) Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of those charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges the findings on which are confirmed.

(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of those charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or

commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

(c) Where a sentence passed by a court-martial has been confirmed, and is found from any reason to be invalid, the authority who would have had power to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence, and the sentence so passed shall have the same effect as if passed by the court-martial, but the punishment awarded by that sentence shall not be higher in the scale of punishments than the punishment awarded by the invalid sentence, nor, in the opinion of the said authority, be in excess of the last-mentioned punishment.

(A) In the case of a man convicted on a charge of desertion after a previous conviction, and also on a charge of having made away with his regimental necessaries, and sentenced to penal servitude,—if the confirming officer confirms the finding on the second charge, but not that on the first charge, which justified the sentence of penal servitude, he is bound under this rule to commute the sentence at least to imprisonment. Otherwise the sentence would be in excess of what is justified by the finding which is confirmed, and would therefore be invalid.

Again, if the second charge in the above case were striking an officer and the confirming officer refuses to confirm the finding on that charge while confirming the finding on the first charge, it will be his duty to consider whether the sentence of penal servitude is not too severe for the offence of desertion unaccompanied by aggravating circumstances, and if he thinks so, he will commute it to some less punishment. See generally, as to the duty of the confirming officer in the exercise of his powers of commutation or mitigation, K.R., para. 588.

(B) The object of this paragraph is to allow any permanent authority to do after confirmation what paragraph (A) allows to be done before confirmation, that is to say, to provide that if the Judge-Advocate-General or a court of law declares one of several charges to be invalid, the commuting authority may mitigate or commute the sentence, so as to make it a valid sentence in respect of any other charge which is valid.

(C) This paragraph enables the commuting authority to substitute a valid sentence for a sentence found after confirmation to be invalid.

Confirmation of finding on alternative charges.

55. (A) Where a special finding has been recorded in relation to alternative charges under Rule 44 (F), and the confirming authority is of opinion that the facts found by the special finding constitute in law the offence charged by any of the alternative charges, that authority may confirm the finding, and in that case shall declare that the finding amounts to a finding of guilty on that charge; but if it is afterwards declared by any authority having power to remit or commute the punishment awarded that the said facts constitute in law the offence charged in one of the other alternative charges, then the confirming authority, or such other authority as aforesaid, may declare that the finding amounts to a finding of guilty on that alternative charge; and the finding shall be a valid finding of guilty on the charge specified in that behalf in the declaration made on confirmation, or, in case of a subsequent declaration, in that subsequent declaration.

(B) The sentence awarded in the case of any such special finding may likewise be confirmed, subject to this proviso, that if the offence in one of the alternative charges involves a higher punishment, or is otherwise graver, than the offence in the charge of which the offender is found to be guilty under the terms of any declaration mentioned in (A), the authority making the declaration, or some other authority having power to mitigate, remit, or commute the punishment awarded, shall mitigate, remit, or commute the punish-

ment according as seems just, having regard to the last-mentioned offence; and the punishment as so modified shall be as valid as if it had been originally awarded in respect of the last-mentioned offence.

(A) See note to Rule 44 (F).

For Forms see Appendix II, Form of Proceedings, para. (14), p. 579. The object of this rule, as already explained in the note to Rule 44 (F), is to prevent a miscarriage of justice in consequence of a difference of opinion as to the offence which is legally constituted by the acts committed by the offender. If, in such a case, the court-martial have recorded a special finding of the facts, it remains under this rule for the confirming authority, and ultimately for any authority having power to commute the punishment, to declare what offence in law the acts committed by the offender constitute. So that if the opinion of the confirming officer is eventually overruled by any superior authority, the finding will take effect accordingly in respect of the charge for the offence which the acts of the offender are declared by the superior authority to constitute.

(B) As respects the sentence, see note to preceding rule.

Confirmation notwithstanding informality in, or excess of, punishment.

56. (A) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence as so varied of the court-martial.

(B) Whenever it appears that a court-martial had jurisdiction to try any person, and that that person was charged with some offence or offences under the Army Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall be valid, notwithstanding any deviation from these rules or any defect or objection, technical or other, unless it appears that any injustice has been done to the offender; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

(A) The object of this paragraph is to prevent the proceedings of courts-martial being rendered invalid, when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents and members of courts-martial who pass sentences which are informal, or in excess of their powers, and confirming officers will, if practicable, send the finding and sentence back for revision, and if they act under this rule, will call the attention of the court to the informality or illegality of the sentence.

Under this paragraph the confirming authority may vary the form in which a sentence is expressed, but cannot amend a sentence wholly illegal; as, for example, if an officer convicted of scandalous conduct were sentenced to dismissal, or if a soldier were sentenced by regimental court-martial to be discharged with ignominy, or if a non-commissioned officer were sentenced to be reduced to the rank of lance-corporal, or to be reprimanded, or if a soldier were sentenced to be confined to barracks, or if a soldier not on active service were sentenced to field punishment.

In any such case the confirming officer should treat the sentence as a nullity, and direct the court to re-assemble and pass a valid sentence. This proceeding would not be a revision of the sentence, so that the law prohibiting the increase of punishment on a revision would not apply, and the sentence in the case above mentioned of the officer might be cashiering, and of the non-commissioned officer might be reduction to the ranks or imprisonment.

Where, however, the punishment exceeds what is authorised by law, the confirming authority can, though such sentence is illegal, vary the sentence so as to bring it into conformity with law, and confirm it as varied.

(B) This paragraph will prevent a miscarriage of justice arising in consequence of defects in the procedure which do not affect the real merits of the case. These defects will usually be of a technical character, as any substantial defect, such as taking illegal evidence by accepting hearsay, or using a copy of a document where the original ought to have been produced, or calling a witness without proper notice to the accused, or refusing to admit evidence adduced by the accused, would ordinarily cause injustice to the person charged. As English law always resolves any doubt in favour of the accused, the court should never allow any technicality to interfere with the accused making his defence in the fullest manner, and while as a whole disregarding technicalities in favour of what they consider to be, in substance, fairness for the purpose of the trial, they must recollect that even a disregard of a technicality may, in some cases, cause injustice, as the object of most technical rules is to prevent injustice. Before, therefore, a confirming officer, in reliance on this rule, confirms a finding and sentence in any respect irregular, he must take care to ascertain that no injustice, however small, has been done to the accused; and the preferable course is, where possible, to send the case back for revision or for another trial. In every such case the confirming officer will call the attention of the officer responsible for the irregularity to the deviation from the rule, or the defect in the proceedings; as officers will be held responsible for such deviation or defect, even though under this rule the conviction of the accused may be upheld.

It may be convenient to note here that if, after confirmation, the charges or the findings thereon are declared to be invalid, the trial must be treated as null, and consequently the person convicted must be relieved from all consequences of his conviction, and all record of the conviction must be erased; but in cases where the sentence alone is invalid the finding will stand good, and therefore the soldier convicted will suffer the forfeitures and other penalties which are consequential on conviction.

Where punishment is remitted, that remission, unless otherwise expressed, will not extend to forfeiture of service or good conduct pay, or to any forfeiture which he suffers by virtue of his conviction, without being sentenced to it. K.R., para. 591.

Insanity.

Provisions as to finding of insanity, and custody of insane person.

57. (A) Where the court find either that the accused is unfit, by reason of insanity, to take his trial, or that he committed the offence with which he is charged, but was insane at the time of the commission thereof, the president shall date and sign the finding, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

(B) If the finding is not confirmed, the accused may be tried by the same or another court-martial for the offence with which he was originally charged.

(C) Where the finding is confirmed, then, until the directions of His Majesty as to the disposal of the accused are known, or in the case of an accused person unfit to take his trial, until any earlier time at which the accused is fit to take his trial, the accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal, but as a person labouring under a disease.

This rule supplements s. 130 of the Army Act, which requires a finding of insanity to be confirmed like any other finding. If, therefore, it is not confirmed, the trial of the accused must proceed in the ordinary course.

It is to be observed that two distinct cases are contemplated. A person may have been sane at the time he committed the offence, but may not be sane enough to take his trial; while, on the other hand, a man insane at the time of committing the offence, may have recovered sufficiently to take his trial. In the former case, if an accused person, found not sane enough to take his trial, recovers before any directions of His Majesty as to his disposal are known, he should be ordered for trial.

See Appendix II, Form of Proceedings, para. (11), p. 573.

General Provisions as to Proceedings of Court.

Seating of members.

58. The members of a court-martial will take their seats according to their army rank, except that in the case of a regimental court-martial consisting entirely of officers of the same corps, they will take their seats according to their rank in that corps.

As to meaning of "corps," see Army Act, s. 190 (15).

Responsibility of president.

59. (A) The president is responsible for the trial being conducted in proper order and in accordance with the Army Act, and will take care that everything is conducted in a manner befitting a court of justice.

(B) It is the duty of the president to see that justice is administered, and that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise.

(A) The court should always have before them a copy of the Army Act, of the King's Regulations, and of the Rules of Procedure, and of any other official books or orders relating to courts-martial which are necessary for the purpose of its proceedings.

If any person interrupts the proceedings of the court, the best course will ordinarily be to order him to be excluded from the court. The court have, however, under the Army Act, ss. 28 and 126, statutory powers for dealing with persons who interrupt the court.

Under those sections if a person is guilty of contempt of the court by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings, the court may proceed as follows:—If such person is subject to military law, they may commit him into military custody, and either order him to be tried by another court-martial, or may order him, after hearing, or giving him an opportunity to make, his excuse, to be imprisoned with or without hard labour, or, if a soldier, to undergo detention for a period not exceeding twenty-one days; and in the latter case the president may, by order under his hand, commit the offender to a prison or to a detention barrack. See Army Act, s. 28, notes.

If the offender is not subject to military law, the president may certify the offence to some civil court for the purpose of obtaining his punishment by such court. Army Act, s. 126 (3), and note.

It must be recollected that the trial of a person cannot proceed in his absence, even though he interrupts the proceedings.

(B) The president should, like the judge of a civil court, act as counsel for an accused person not defended by counsel. He will therefore cause to be called before the court any witness, though not called either by the prosecution or the defence, whom he considers able to give material evidence to the court, and a witness so called may be cross-examined by the prosecutor and the accused (see Rule 78); but the president has no power to call the accused as a witness (see Rule 80). The president will also put to the witnesses (including the accused if he gives evidence) any questions which appear to him necessary or desirable to elicit the truth. In particular, he should put questions to the accused (if he gives evidence) for the purpose of enabling him to explain any circumstances appearing in the evidence for the prosecution; but he must not cross-examine the accused, and should not put questions to him with a view to supplement the evidence for the prosecution.

It will also be the duty of the president to take care that the accused does not suffer any prejudice in consequence of his inability to put proper questions to witnesses, or of his not being able, in giving evidence, to bring out clearly the points which he wishes brought out, or of his not fully understanding the nature of the proceedings. The president will also examine the summary of the evidence, and if a witness gives different evidence from what is there stated, will question him as to the difference.

If there is a judge-advocate he has a similar duty: Rule 103 (G). The presence of a judge-advocate, however, does not relieve the president from the duty under this rule.

Power of court over address of

60. (A) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the

whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused. prosecutor and accused.

(B) The court may stop the prosecutor in referring to any matter not relevant to the charge then before the court, or any matter which the court is not investigating, and it is the duty of the court to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor, and to prevent the prosecutor from commenting at any time on the failure of the accused or his wife to give evidence.

(C) The court should allow great latitude to the accused in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to any liability to further proceedings to which he would otherwise be subject. The court may caution the accused as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of irrelevance.

(A) The prosecutor is an officer for securing that justice is done, not a partisan to obtain a conviction, independently of the justice of the case (see ch. V, para. 57). Therefore he should prove either by witnesses called for the purpose, or by the examination of his other witnesses, any facts which show the true character of the offence, whether they tend to aggravate or alleviate it, or to show the innocence of the accused, and he must be especially careful to prove any facts tending either to show the innocence of the accused, or to extenuate his offence. If, for example, the accused is charged with insubordinate language to his superior officer, and there are circumstances of provocation, which, if proved, might mitigate the punishment, though not justifying an acquittal, the prosecutor should call evidence to prove those circumstances.

Again, many acts are only offences when done knowingly or with a certain intent. *Primâ facie* it lies on the prosecution to show that the accused had the guilty knowledge which constitutes the offence; but absolute proof of guilty knowledge or intent is frequently impossible, and it can only be inferred from the circumstances. This inference the court is at liberty to draw, unless the accused produces evidence to rebut it, but in this, as in every other case, all facts which tend to show either the existence or the absence of the intent or knowledge on the part of the accused must be brought out by the prosecutor. For example, if the accused is charged with desertion, and the prosecutor is aware that, though found in plain clothes, he had either received leave of absence, or leave to be in plain clothes, the prosecutor should prove that leave. So, too, if a soldier is charged with attempting to desert, and the evidence is that he went to a railway station and took a ticket for (say) Liverpool, and the fact is that several other soldiers in possession of passes took tickets for Liverpool at the same time, the latter fact should be brought out; as it gives a different complexion to the fact of taking a ticket, which of itself might be strong evidence against the accused.

The prosecutor must not introduce into the evidence against the accused any matters of aggravation which do not form part of the transaction in respect of which the accused is charged before the court, nor, as a rule, matters which, if true, are specific military offences with which the accused might be charged. If, for instance, he is charged with desertion, the prosecutor must not introduce, by way of aggravation, that he has been insolent or insubordinate, or that he had been previously drunk. On the other hand, if a soldier is charged with serious acts of insubordination, including violence to an escort, and the soldier was drunk, that fact should be brought out in the examination of the witnesses. Not only is the drunkenness part of the circumstances of the case, but it may modify the character of the offence. See ch. III, para. 31; K.R., para. 575.

If the trial is in consequence of the accused having claimed a court-martial instead of submitting to the jurisdiction of his commanding officer, that fact should be stated by the prosecutor. See Appendix II, Form of Proceedings, para. (3), p. 563.

(B) *Matter not relevant to the charge.*—What is and what is not relevant to any charge is in some cases a matter of considerable difficulty (see ch. vi., paras. 16–29); but, as there stated, in ordinary cases common sense will determine whether the matter referred to does or does not bear on the particular charge before the court.

Anything which tends to show that the accused committed the offence mentioned in the charge, or to show the true character of the offence (see note to (A)), is, ordinarily speaking, relevant.

The prosecutor must not comment on the fact that the accused has not applied to give evidence himself or to call his wife as a witness. The court must immediately stop him if he attempts to do so, and if any such comment is contained in a written address, it should be struck out and not read.

(C) The right of the accused in making his defence is stated in this sub-section, and is not affected by his right to give evidence himself, whether he avails himself of that right or not. If his charge against other persons of blame or criminality is made merely for the purposes of his defence, and is in any degree justified by the facts, he will not incur liability; but if his charges against others are wholly irrelevant to his defence, or if they come within the provisions of s. 27 of the Army Act relating to false accusations, he is liable to be proceeded against accordingly. The court may caution him as to such liability, but should not do so if there is any connection whatever between the charge and his line of defence. The case must be very special indeed to justify the court in stopping an accused person in his defence, or in excluding, on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against an accused person on account of his defence. The court should also caution him that if he so conducts his case as to throw discredit on the witnesses for the prosecution, he will, if he gives evidence himself, render himself liable to cross-examination as to character. See Rule 80 and note.

Where a person tried for desertion made in his defence statements reflecting on the officers of the regiment as the reason for the prevalence of crime in the regiment, it was held that the defence, although the statements in it were eventually proved to be false, was not wholly irrelevant, as the accused might have hoped that the statements would lead to a mitigation of his punishment; and it was also held that the proper course was, not to try the offender again for the purpose of ascertaining the truth of his statements, but to hold a court of inquiry for that purpose.

Procedure on trial of accused persons together.

61. Where two or more accused persons are tried together and any evidence is tendered by any one or more of them, the evidence and addresses on the part of all the accused persons will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards all the accused persons.

See note to Rule 71 (C).

As to the effect of one accused person giving evidence against another charged with the same offence, see Rule 80 (3) (C).

Separate charge-sheets.

62. (A) Where the convening officer directs any charges against an accused person to be inserted in different charge-sheets, the accused shall be arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 31 to 44, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(B) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(C) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 45, and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 37 and 46 to 50, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(D) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such an event may, without trying the accused upon any of the subsequent charge-sheets, proceed as directed by (C.)

(E) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such a case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(F) If the accused pleads "Guilty" to a charge in a charge-sheet, and the trial does not proceed (as mentioned in Rule 37 (A)) with respect to the other charges in that charge-sheet, the court shall, subject to the directions of the convening officer, proceed to try the accused on the charges in the next charge-sheet before they proceed as directed by Rule 37 (B) and (C).

(A) Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not embarrassed by being tried at the same time for several charges; but embarrassment will certainly arise if the facts of any of the charges are very complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different offences. In such cases, even practised advocates and judges find a great difficulty in keeping the different charges and the evidence on each charge distinct, and still more will the difficulty be felt by an uneducated person, and by a court not constantly accustomed, like a civil court, to deal with evidence.

In such cases, therefore, as a general rule, the convening officer should cause the charges to be inserted in separate charge-sheets.

The cases which are likely to arise may be classified as follows:—

Case No. 1. (Single offence repeated on different days.) The first case arises where the accused has been guilty of the same description of offence on two or more different days. For example, a soldier steals from a comrade a watch on Monday, a pair of shoes on Tuesday, a pair of stockings on Wednesday, and so forth. Supposing he had stolen all these articles at the same time, it would have constituted the same offence, but if he steals them on separate days, the offences are obviously distinct.

Case No. 2. (Several offences forming part of one wrongful transaction.) A more difficult case arises where the set of acts of which a person has been guilty are in fact part of one wrongful transaction, so to speak, and yet involve several military offences of different descriptions.

For instance, a soldier, being drunk, uses insubordinate language to his serjeant, knocks him down, and then runs away. He commits four offences: (1) the offence of drunkenness; (2) the use of insubordinate language to his superior officer; (3) the striking his superior officer; (4) desertion, or absence without leave.

Case No. 3. (Several offences, not forming part of the same wrongful transaction.) Another case arises where several offences of different descriptions have been committed by the same person, but at different times. For example, suppose that in the preceding case the desertion, or absence without leave, had taken place some time after the commission of the two previous offences, and in such manner that they could not be deemed part of the same wrongful transaction.

In case No. 1, the offences being of the same description, may as a general rule, be contained in the same charge-sheet; but many offences of the same description should not be inserted in the same charge-sheet, as to do so might embarrass the accused in his defence. Usually it will be undesirable to insert more than three charges for offences of the same description in the same charge-sheet, unless the offences have been part of a system, as, for instance, a system of embezzlement carried on by the accused, in which case it may not be improper to increase the number of charges.

In case No. 2, four offences constitute one wrongful transaction, and therefore may be included in the same charge-sheet, but if they are so

included, the accused must not at the same time be charged in the same charge-sheet with any previous offence of the same description; as, for instance, any previous offence of striking his superior officer, or of desertion, &c.

In case No. 3, if the accused is charged both with striking his superior officer and with desertion, or absence without leave, the latter offence should not be included in the same charge-sheet as the former.

In practice, in such an instance as case No. 2, the serious offences of striking a superior officer and of desertion or absence without leave, should alone be charged.

Indeed, it is advisable as far as possible to avoid charging an accused person with more than one offence, as a multiplicity of charges leads to unnecessary trouble and confusion; and if the gravest of several offences is selected, the punishment will in all probability be sufficient to satisfy the ends of justice. It may, however, in some cases be necessary to prove several offences, in order to guide the court as regards the proper amount of punishment.

Assuming that it is doubtful whether one or more of a set of offences can be proved, it will of course be advisable to omit any offence the evidence with respect to which is doubtful, and to bring before the court those charges only of which the proof appears to be sufficient.

The result of the above remarks is as follows (see also Appendix I, Note as to use of Forms of Charges, p. 529):—

(i) Repeated instances of the same description of offence may be included in the same charge-sheet, though each instance must constitute a separate charge. (See, however, as to desertion and fraudulent enlistment, note to s. 12 of the Army Act.)

(ii) Offences of different descriptions should be included in separate charge-sheets, except where they form part of the same wrongful transaction.

(iii) If offences of different descriptions are included in one charge-sheet as forming part of one wrongful transaction, any act other than an act which forms part of that wrongful transaction should not be charged as an offence in the same charge-sheet.

(iv) Where one offence has in fact been committed, but doubt arises as to what particular description of offence has been committed, one charge-sheet may include alternative charges for offences of different descriptions, but each charge will refer to the same set of particulars.

(B) The convening officer will regulate the order for the trial of different charge-sheets according to the gravity of the offence and the convenience of summoning the witnesses, or other circumstances. It is desirable to try first the gravest offence, as, if the accused is convicted, he will be sufficiently punished without trying him on the minor offences. In some cases, it may be better to try an accused person on a simple case first, so as to avoid the necessity, if he is convicted upon that, of trying him for an offence where the case is complicated, and the number of witnesses is large.

(C) It will be observed, that the separation of charges in different charge-sheets is merely for the purpose of enabling the court and the accused to keep distinct in their minds the different cases and the evidence thereon, with a view to the accused making a proper defence, and the court arriving at a proper finding, without being confused by evidence on entirely distinct cases; and that the result, when the time for sentence is reached, is the same as if the accused had been tried at the same time on all the charge-sheets. Unless, therefore, the convening officer directs under (D) that the accused need not be tried upon the subsequent charge-sheets, the court will not sentence the accused until they have disposed of all the charge-sheets, and will then award one sentence in respect of all the charges contained in the different charge-sheets of which the accused has been found guilty.

(D) It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the different charge-sheets; it may, however, in some cases be necessary to try the accused on a subsequent charge-sheet, in order to justify a more severe sentence for the offence charged in the first charge-sheet.

(E) The court should always, unless they think the claim very unreasonable, accede to a demand to be tried separately in respect of any particular charge.

(F) The object of this is only to provide that all the charge-sheets should be disposed of before the court proceed to sentence the offender; in the case of "Not guilty," this is provided for by (C).

Sitting in closed court.

63. (A) When a court-martial sit in closed court on any deliberation amongst the members or otherwise, no person shall be present

except the members of the court, the judge-advocate, and any officers under instruction; and the court may either retire or may cause the place where they sit to be cleared of all other persons not entitled to be present.

(B) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court and in the presence of the accused.

(A) *Cleared.*—See Army Act, s. 53 (5).

(B) *Shall be in open court.*—This does not control the power of the court to exclude a person who interferes with the proceedings—a power incident to every court as necessary for the proper conduct of the proceedings, though it does not extend to the exclusion of the accused, as the trial cannot proceed in his absence.

View.—See Army Act, s. 53 (7). All the members must proceed to view any place, and the accused must be present there; usually the court will adjourn for the purpose to the place to be viewed.

Time for trial.

64. (A) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon, as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determine.

(B) If the court consider it necessary to continue a trial after six in the afternoon they may do so, but if they do so should record in the proceedings their reason for so doing.

(C) In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies under his hand that it is expedient for the public service, trials may be held at any hour.

(D) If the court or the convening officer, or other superior military authority, think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly, but otherwise the court should not sit on any of those days.

(A) See K.R., para. 579, and next Rule and note.

(C) This certificate should be annexed to the proceedings.

(D) The reason for sitting should be annexed to the proceedings.

Continuity of trial and adjournment of court.

65. (A) When a court is once assembled and the accused has been arraigned, the court should (but subject to the provisions of the Army Act, and of these rules as to adjournment) continue the trial from day to day and sit for a reasonable period on every day, unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

(B) A court-martial in the absence either of a president, or of a judge-advocate (if a judge-advocate has been appointed for that court-martial), shall not proceed, and if necessary shall adjourn.

(C) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(D) Any adjournment may be made from place to place as well as from time to time. If the time to which the adjournment is made is not specified, the adjournment will be until further orders from the proper military authority; if the place to which the adjournment is made is not specified, the adjournment will be to the same place or to such place as may be specified in further orders from the proper military authority.

(A) *Subject to the provisions, &c.*—The Army Act, s. 53 (6), authorises the court to adjourn from time to time without any restriction. It is, however, very important that a trial by court-martial, once begun, should proceed with strict regularity and without interruption, to its conclusion. This rule, therefore, requires the court to sit continuously from day to day, unless it is

impracticable to do so, or unless an adjournment is necessary for the ends of justice.

Thus the court may adjourn on account of the illness of the accused, or for the purpose of viewing any place, or of securing the attendance of witnesses (see Rule 79), or of obtaining evidence from recusant witnesses, or of obtaining the opinion of the Judge-Advocate-General, or for reference to the convening or confirming officer on any question, or for any purpose, if the court are of opinion that such adjournment is necessary for the ends of justice. (See note to Rule 76.)

The court, however, should not as a rule permit an adjournment for the purpose of obtaining further evidence on the part of the prosecution, and should only adjourn for the production of evidence for the accused, where they consider that he has not previously had sufficient opportunity for procuring his witnesses, or where it would be unjust to the accused not so to adjourn. Great care, therefore, must be taken, both by the prosecutor and by the accused, to have ready at the trial all the witnesses and documents they desire respectively to produce. The court should adjourn, if an adjournment is requested by the accused to prepare his defence, by the prosecutor to prepare his reply, or by the judge-advocate to prepare his summing-up.

In the event of the illness of a member, the court may, if not reduced below its legal minimum, either proceed without him, or adjourn, as they think proper; but if reduced below the legal minimum, Rule 66 applies.

When a court adjourns before the conclusion of the trial, the adjournment is to be entered in the proceedings (see Appendix II, Form of Proceedings, para. (5), p. 567), and either announced in court in the presence of the accused, or communicated to the prosecutor and accused.

Rules as to adjournment.—See Rules 14 (D), 18, 22 (C), 23 (B), 25 (G), 33 (B), 34 (C), (D), 44 (E), (F), 65 (B), (C), (D), 67, 76, 79, 102.

Reasonable period.—Sittings of six or seven hours will be found, as a rule, quite long enough, and they should not be further protracted without some special reason. K.R., para. 579. Too long sittings unduly strain the attention of the members, and may operate unfairly to the accused, as at the close of a long sitting he cannot properly make his defence.

Every day, i.e., except Sunday, &c., see Rule 64 (D).

(B) *In the absence of a president.*—If the president dies, or is unable to attend, the convening authority may appoint the senior member of the court (being of sufficient rank) to be president, assuming the court not to be reduced below the legal minimum. If he is not of sufficient rank, the court will be dissolved. Army Act, s. 53 (2). Where the inability of the president to attend is merely temporary, no new appointment will be necessary, and the court will adjourn till he is able to attend. The senior member will always report the fact of the death, or inability to attend, of the president, to the convening authority. Rule 66 (A).

(C) *Military exigencies.*—These can seldom occur, except on active service.

(D) *From place to place.*—This meets the case of a view, as well as of a court-martial held on the line of march; also the case of adjournment to the quarters of a sick witness, for the purpose of taking his evidence.

Suspension of trial.

66. (A) Where, in consequence of anything arising while the court are sitting, the court are unable by reason of dissolution (as specified in section 53 of the Army Act, or otherwise), or of the absence of the president, to continue the trial, the president, or in his absence, the senior member present, will immediately report the facts to the convening authority.

(B) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, the proceedings are null, and the accused may be tried before another court-martial.

(A) *While the court are sitting.*—Anything which occurs while the court are not sitting will usually be reported in some other way to the convening authority; if not, it should be reported as directed by this rule.

By dissolution.—A court is dissolved if, after the commencement of the trial, the court is, by death or otherwise, reduced below the legal minimum (see notes to Rules 17–19), or if, on account of the illness of the accused before the finding (see next rule), it is impossible to continue the trial, or if, on the failure of the president, a new president cannot be appointed. Army Act, s. 53 (1) (2) (3).

Senior member.—That is, according to the rank in which they take their seats. See Rule 58.

For Form see Appendix II, Form of Proceedings, para. (5), pp. 566, 567.

67. In case of the death of the accused or of such illness of the accused as renders it impossible to continue the trial, the court will ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority. Proceeding on death or illness of accused.

See Army Act, s. 53 (3) and note.
This evidence will be taken on oath, or solemn declaration, in the same manner as on the trial.

68. (A) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken can take no further part in the trial by that court of that person, but the court will not be affected except as provided by section 53 of the Army Act. Presence throughout of all members of court.

(B) An officer cannot be added to a court-martial after the accused has been arraigned.

(A) *Except as provided.*—That is, unless it is reduced below the legal minimum, and so dissolved under s. 53 of the Army Act.
(B) *Arraigned.*—See ch. V, para. 49.

69. (A) Every member of a court must give his opinion on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal. Taking of opinions of members of court.

(B) Subject to the provisions of the Army Act, every question shall be determined by an absolute majority of the opinions of the members of the court, and in the case of an equality of opinions the president's second or casting vote will be reckoned as determining the majority.

(C) The opinions of the members of the court should be taken in succession, beginning with the junior in rank.

(B) *Absolute majority.*—Otherwise, a punishment might be imposed by a minority. For instance, if the punishment proposed by four members was penal servitude, by three imprisonment, and by two a forfeiture, the penal servitude might be imposed, although five members were opposed to it.

In order to obtain the absolute majority, it will be desirable first to take the opinion of the members of the court as to the nature of the punishment to be awarded, that is to say, penal servitude, imprisonment, detention, cashiering, forfeiture, or other punishment.

Where opinions differ as to the nature of punishment, the most lenient should be put first, then the next most lenient, and so forth, the most severe being put last. Any member who is in favour of the most lenient punishment, if overruled, will, of course, give his opinion in favour of the next most lenient, and will not oppose this because he is desirous of having the punishment still more lenient.

For example, if the court consist of nine members, of whom four are in favour of penal servitude, three of imprisonment, and two of a forfeiture, the forfeiture will be put first to the court, and when negatived, the imprisonment will be put next. The members who were in favour of forfeiture will, of course, vote for imprisonment as against penal servitude, and thus five votes will be given in favour of imprisonment, being an absolute majority of the court.

When the nature of the punishment has been determined, the quantum of punishment must be ascertained; that is to say, in the case of imprisonment or detention, the number of months or days of imprisonment or detention.

As before, the most lenient proposal will be put first, and a member who is in favour of the shortest term of imprisonment will, of course, support the next shortest term, rather than support a longer term, and will not give his opinion against the next shortest term merely because he desires to have a term shorter still.

For example, if in a court of nine members two members desire to award three months' imprisonment, two others four, another six, and the other four ten months, the three months will be put first, and, when negatived, the four months will be put next, and will be supported by the members who wished for three months, but will be opposed by the members who desire a

longer term. The six months will next be put, and will be supported by those who desire to award three months and four months, so that the ultimate sentence will be six months' imprisonment.

It is not a proper course of proceeding to take the terms of imprisonment or other punishment proposed by each member, and strike an average; but naturally in the course of discussion among the members of the court, some punishment intermediate between the most severe and most lenient punishment proposed by the different members will usually be arrived at, without necessarily resorting to actual voting, as in the above examples.

(B) The provisions of the Army Act referred to are those contained in s. 48 (8), where the concurrence of two-thirds is required for a sentence of death; in s. 53 (8), where an equality of votes on the finding is declared to be an acquittal; and in s. 51 (3) and (5), under which an objection to the president allowed by one-third of the members, and an objection to an officer allowed by one-half of the members is to be allowed.

(C) *Junior in rank*, *i.e.*, rank in which they take their seats (Rule 58).

The opinion of each member is taken separately on each charge (Rule 43 (B)). If there is a judge-advocate, the opinions are taken by him; if there is not, then by the president.

The oath taken by the members of the court operates, as a general rule, to prevent the opinions of the individual members being disclosed. See note to sub-section (1) of s. 52 of the Army Act.

Procedure on incidental question.

70. If any question should arise incidentally during the trial, the person, whether prosecutor or accused, requesting the opinion of the court is to speak first; the other person is then to answer, and the first person is to be allowed to reply.

This rule will apply to such questions as the admissibility of evidence, the propriety of any question, or the recalling of a witness.

Swearing of court to try several accused persons.

71. (A) A court may be sworn at the time to try any number of accused persons then present before it, whether those persons are to be tried together or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(B) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that person, and swear the members of the court for the trial of the others alone.

(C) In the case of several accused persons to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession.

(A) Under this rule it will not be necessary, where there are several accused persons to be tried separately, to go through the process of swearing the court for each, but all the accused may be brought up together, and the proceedings for objections to and swearing the members (see Rules 25 to 30) may be gone through for all the accused at the same time. After the members are sworn, those persons who are not then to be tried will be removed.

This course of procedure will not affect the position of the court, which will, as heretofore, be a separate court for the trial of each case, and, as heretofore, the swearing of the court will be mentioned in the proceedings of each separate case.

(B) It need hardly be observed that when, in consequence of an objection by one accused a new officer serves, the other accused persons who before made no objection to the court will have the right to object to the new officer.

(C) It is obvious that in the case of several accused persons being tried together, each person will be called on separately to plead and make his defence, and a finding must be arrived at separately for each person accused, and each person accused found guilty must be separately sentenced, and a separate record accordingly will be made in the proceedings. It may be proper to make a distinction between the sentences of persons found guilty of the same offence, having regard to rank, character, degree of criminality, or other considerations.

Swearing of interpreter

72. (A) At any time during the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or

the accused requests it on any reasonable ground, be sworn to act as interpreter. and shorthand writer.

(B) An impartial person may at any time of the trial, if the court think it desirable, be sworn to act as a shorthand writer.

(C) Before a person is sworn as interpreter or shorthand writer, the accused should be informed of the person who is proposed to be sworn, and may object to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear that person as interpreter or shorthand writer.

(A) and (B). It will often be convenient to swear a shorthand writer and interpreter at the same time as the members and officers of the court are sworn, but this is not obligatory. For form of oath and solemn declaration see Rules 27 and 28. For remarks on employment of interpreter, ch. v, para. 70.

(C) Any objection made by the accused to the interpreter or shorthand writer will be dealt with in the same way as an objection to a member of the court.

The court should, if the accused requests it, allow him to give evidence himself or to call witnesses in support of the objection. Any objection which appears to the court to have any foundation should, as a rule, be allowed.

General Provisions as to Witnesses and Evidence.

73. (A) A court-martial shall not receive evidence for the prosecution, which is not relevant to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either according to the rules of civil courts in England, or under the Army Act, or under any other Act of the Parliament of the United Kingdom. Evidence to be relevant and according to rules in English courts.

(B) The rules of evidence adopted in civil courts in England, including those contained in the Criminal Evidence Act, 1898, will be followed by courts-martial, and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person will not be required to answer any question or produce any document which he could not be required to answer or produce in a like proceeding before a civil court in England.

(C) By "civil court" in this rule is meant a court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction.

(A) With respect to the relevancy of evidence, see the note on Rule 60 (B), and as to relevancy and inadmissibility of evidence generally, see ch. VI, paras. 15–81.

The provisions of the Army Act referred to in this paragraph are ss. 163, 164, and 165.

(B) and (C). The Army Act, by s. 128, directs courts-martial to follow the rules of evidence which are followed in civil courts in England. Moreover, s. 127 of the Act expressly lays down that courts-martial are not to be subject in any respect to any Indian, colonial, or foreign statute law or ordinance.

(B) This rule applies to courts-martial the rules of evidence contained in the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), in which it is expressly enacted that its provisions are not to apply to courts-martial until applied by Rules of Procedure made under the Army Act. The Act of 1898 enables the accused and the wife of the accused to give evidence like other witnesses, subject to certain conditions, as to which see Rule 80 and note. Subject to the provisions of that rule the rules of evidence applicable to other witnesses will equally apply to the evidence of the accused.

74. The court may take judicial notice of all matters of notoriety, including all matters within their general military knowledge. Judicial notice.

Judicial notice means that the court will recognise a matter without formal evidence (see ch. VI, paras. 10, 11).

75. The prosecutor is not bound to call all the witnesses whose evidence is in the summary of evidence, or in the abstract of Calling of all prosecutor's witnesses.

evidence given to the accused, but he should ordinarily call such of them as the accused desires to be called, in order that the accused may, if he thinks fit, cross-examine them, and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses.

As the cross-examination of a witness for the prosecution may be most material for the purposes of the defence, a prosecutor should always have all his witnesses present. Failure to produce a material witness for cross-examination might invalidate the proceedings. Any witness whose evidence is in the summary or abstract of evidence, and whom the accused asks to have called, should be called by the prosecution.

The object of this rule is to enable the prosecution to proceed, although some witness is not available, and the rule is not intended to absolve the prosecutor from the responsibility of proving his case, or of calling all the available witnesses who can give material evidence (see note to Rule 60), and, as a rule, the whole case as it appears in the summary of evidence should be proved by the prosecutor. If the case fails from the prosecutor not calling any available witness, or not asking any necessary questions of a witness, he becomes personally responsible to the convening officer.

Calling of witness whose evidence is not contained in summary or abstract.

76. If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract given to the accused, notice of the intention shall be given to the accused a reasonable time before the witness is called; and if the witness is called without such notice having been given, the court shall, if the accused so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of the witness to be postponed, and the court shall inform the accused of his right to demand such an adjournment or postponement.

Where no summary or abstract has been delivered (as *e.g.*, on suspension, (under Rule 104), of Rule 5) this rule will apply to every witness.

The court are, under Rule 86 (D), justified in calling of their own motion a witness not produced by the parties, if they consider it necessary for the ends of justice, but this power should be sparingly exercised; and they should not adjourn in order to obtain for themselves further testimony.

List of witnesses of accused.

77. The accused shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the accused has not requested steps to be taken as provided for by Rule 14 (A).

The prosecutor may be called as a witness for the defence. The judge-advocate, though not competent as a witness for the prosecution, may be called for the defence. A member of a court-martial is a competent witness for the defence, but not for the prosecution (Army Act, s. 50 (3)); and may be sworn at any stage of the proceedings; but it is desirable to avoid placing officers on courts-martial whose evidence is likely to be required. It need scarcely be observed that a member, if called on to give evidence, must be sworn like other witnesses in open court, and be subject to cross-examination, and that he does not cease in any respect to be a member of the court.

See Rule 106 (D) for the corresponding provisions in the case of a field general court-martial.

Procuring attendance of witnesses.

78. (A) The convening officer, or, after the assembly of the court, the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of his attendance.

(B) Any such witness who is not subject to military law may be summoned to attend by order under the hand of the convening officer, the president of the court, the judge-advocate, or the commanding officer of the accused.

(c) Any such witness who is subject to military law shall be ordered to attend by the proper military authority.

(A) *Whose attendance can reasonably be procured.*— These words will prevent an accused person from having any technical ground of complaint in case a distant witness whom he requires is not procured; but it is the duty of the officer (whether the convening officer or the president) to secure the attendance of every witness whom there is any ground to suppose to be material for the defence, and the court should adjourn, if necessary, for the purpose. (See Rule 79.)

May be required to undertake to defray the cost.—This power is given in order to prevent accused persons or prosecutors demanding unreasonably the attendance of witnesses. In the case of the prosecutor, the cost would usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness may be held afterwards to invalidate the proceedings of the court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had on the court.

See generally as to expenses of witnesses, the Army Allowance Regulations.

If a witness has in his possession, or under his control, any books, accounts, letters, returns, papers, or other documents which are thought necessary for the trial, care must be taken, in summoning him, to require him to bring them with him; as he would be justified in declining to acknowledge a mere verbal request.

As to the mode of applying for the attendance of military witnesses from distant stations, see K.R., para. 571.

If a civil witness who has been duly summoned, and whose expenses have been tendered, does not attend, the court should take evidence on oath as to the service of the summons and the tender of expenses. The President should then forward a certificate through the convening officer to the adjutant-general reciting the facts, and attaching a certified extract from the proceedings.

(B) A witness summoned or ordered to attend before a court-martial has the same privilege from arrest as a witness before one of the superior civil courts. (Army Act, s. 125 (2).) See note to that section as to what this privilege is. If a witness not subject to military law makes default in obeying a summons after payment or tender, of his expenses, he can be punished by a civil court. (Army Act, ss. 126, 180 (1).). Any such witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom.

Order.—For Form of Summons, see Appendix II, p. 580.

(C) Disobedience to any such order is punishable under s. 28 (1) of the Army Act.

There is no rule of law which exempts the governor or the general commanding in a colony from giving evidence; but regard must be had to the dignity of his office, and it is clear that he would be justified in declining to answer questions respecting confidential official correspondence, and like matters, on grounds of public policy. (See ch. VI, paras. 95-98.)

Adjournment of court for non-attendance of witnesses.

79. If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall adjourn and report the circumstances to the convening officer.

Evidence of the accused and his wife.

80.—(1) Subject to the provisions of Rule 40, an accused person may at any stage of any proceedings at which under these rules evidence for the defence may be given, apply to give evidence as a witness for the defence himself, or to have his wife called as a witness for the defence, but neither the accused nor his wife shall be called as a witness, except on the application of the accused.

(2) The accused giving evidence shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

(3) An accused person giving evidence may be asked any question

in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged, but shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

(A) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged ; or

(B) he has personally or by his counsel or officer acting as counsel asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor, or the witnesses for the prosecution ; or

(C) he has given evidence against any other person charged with the same offence.

(4) The wife of an accused person shall not be compelled to disclose any communication made to her by her husband during the marriage.

This rule reproduces the principal provisions of the Criminal Evidence Act, 1898.

(1) *Subject to the provision of Rule* 40.—The provisions referred to are those relating to the time at which the accused is to give his evidence if he is the only witness to facts called by the defence.

"*Or to have his wife called . . . . on the application of the accused.*"—The rule that the wife of an accused person may not be called except as a witness for the defence, and on the application of the accused, is subject to two exceptions : (1) where the offence is an offence under an enactment mentioned in the schedule to the Criminal Evidence Act, 1898 ; (2) where the wife of an accused person may be called as a witness by common law. (As to these exceptions, see ch. VI, para. 86.)

(2) If the accused is violent, it may be impossible for the court to allow him to give his evidence from the place from which other witnesses give their evidence ; but, except in such cases, the accused should always while he is giving evidence be treated like any other witness, but he will remain under escort while giving evidence.

(3) If the accused refuses to answer a question put to him in cross-examination, and the question is one which another witness would be required to answer, and is not a question which an accused person is under this rule specially exempted from answering, the accused may be compelled to answer the question in like manner as another witness might have been compelled to answer it—that is to say, by conviction for an offence under s. 28 (4) of the Army Act.

(A) Evidence tending to show guilt of criminal acts, and charges other than those which are the subject of the charge, are admissible only upon the issue whether the acts charged were designed or accidental; or to rebut a defence otherwise open. See ch. VI, para. 93A.

(B) It will be for the court to decide whether or not the accused has done anything to render himself liable to be cross-examined as to character under this provision. If there is any doubt on the point, their decision should be in favour of the accused. If an accused person is conducting his case in such a manner as to render himself liable to be cross-examined as to character, the court should warn him of the consequences. See ch. VI, para. 93A.

If the accused has given evidence against another person charged with the same offence, that other person may cross-examine him as to character.

It must, however, be remembered that in no case may a question be put to an accused person which would be inadmissible in the case of another witness. See Rule 92 (B).

Withdrawal of witnesses from court.

81. During the trial a witness other than the prosecutor or accused ought not, except by special leave of the court, to be in court while not under examination, and if while he is under

examination a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

As the trial begins with the arraignment of the accused, any witnesses in court should be ordered to withdraw before he is arraigned. If any such discussion as is mentioned in the rule arises, the court should generally order the witness to withdraw, as the discussion might influence his answer. But the accused, whether he intends to give evidence himself or not, must always be present, except when the court is closed for the discussion of any question arising in the course of the trial, or for the deliberation on the finding or sentence of the court (see Rule 63). As to an accused person giving evidence after hearing the evidence of the other witnesses for the defence, see note to Rule 41 (B).

Swearing of witnesses.

82. (A) Every witness, before he gives his evidence, shall be sworn by the judge-advocate, or by the president, or by a member of the court.

(B) The form of oath for a witness shall be as follows :—

"The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth.

So help you GOD."

(C) Rule 30 shall apply to every witness.

(D) Where a witness is permitted to make a solemn declaration instead of being sworn, the declaration may be made before a person authorised to administer the oath, and the form of declaration shall be as follows :—

"I, , do solemnly promise and declare that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth."

(A) See Army Act, s. 52 (3). As to mode of administration of the oath, see Rule 30 and note. As to swearing the prosecutor as a witness, see note on Rule 46 (B).

(D) A solemn declaration is allowed to be made in the circumstances mentioned in s. 52 (4) of the Army Act, that is to say, where the witness objects to take an oath, and the court are satisfied of the sincerity of the objection, or he is objected to as incompetent to take an oath and the court are satisfied of the oath having no binding effect on his conscience.

If a witness refuses to be sworn or make a declaration, or to produce any document in his possession or control, legally required by the court to be produced, or to answer any question to which the court may legally require an answer; the court may, if he is subject to military law, order him to be taken into military custody, with a view to his punishment, Army Act, s. 28, and if he is not so subject, may certify the offence to a civil court, with a view to his punishment by such court, Army Act, s. 126. The civil court will be the same as that mentioned in the note to s. 126 (3).

Mode of questioning witnesses.

83. (A) Every question may be put to a witness orally by the prosecutor, accused, or judge-advocate, without the intervention of the court, and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or accused, in which case he will not reply until the objection is disposed of.

(B) The evidence of a witness as taken down should be read to him after he has given all his evidence and before he leaves the court, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and accused may respectively examine him respecting the same.

(A) As under this rule every question may be put to a witness without being previously written down and submitted for the approval of the president or the court, the court and the judge-advocate, as well as the prosecutor, will have to attend to questions put, so as to object, if necessary, to the question, before the witness replies to it.

(B) *Read to him.*—When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end, and not by way of interlineation or erasure. See Appendix II, Form of Proceedings, paras. (6) and (7), pp. 568, 569.

Examination and cross-examination.

84. (A) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross-examination may be re-examined by the person calling him on matters raised by the cross-examination.

(B) The court may, if they think fit, allow the cross-examination of a witness to be postponed.

See Appendix II, Form of Proceedings, paras. (5) (6) (7) (8), pp. 565-571.

For the law relating to the examination, cross-examination, and re-examination of witnesses, see ch. VI, paras. 104-119.

(A) As to the evidence of the accused, see note to Rule 59 (B).

(B) The court should, if the accused requests it, allow the cross-examination of a witness to be postponed, unless the request appears to be made for the purpose only of obstruction.

Questions to witness by members of court or judge-advocate.

85. (A) At any time before the time for the second address of the accused, the judge-advocate, and any member of the court, may, with the permission of the court, address through the president any question to a witness.

(B) Upon any such question being answered, the president shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the accused, and which the court deem reasonable.

Second address. See Rule 41 (C).

Any question means, in this rule and the next, any question which might have been put to the witness when first called.

Any question put by a member of the court or judge-advocate will ordinarily be more conveniently put after the examination of the witness by the prosecutor and the accused is concluded, but before any other witness is called.

The court should always, under the power given by this rule, ask a witness any question which they are requested by the prosecutor or the accused to ask, and which does not seem unreasonable.

Re-calling of witnesses, and calling of witnesses in reply.

86. (A) At the request of the prosecutor or accused person a witness may, by leave of the court, be re-called at any time before the time for the second address of the accused for the purpose of having any question put to him through the president.

(B) A witness may, in special cases, be allowed by the court to be called or re-called by the prosecutor before the time for the second address of the accused, for the purpose of rebutting any material statement made by a witness for the defence upon his examination by the accused on any new matter which the prosecutor could not reasonably have foreseen.

(C) Where the accused has called witnesses as to character, the prosecutor before the time for the second address of the accused may call or re-call witnesses for the purpose of proving a previous conviction or entries in the conduct book against the accused.

(D) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary for the ends of justice.

Second address. See Rule 41 (C).

(A) The president should also put to the witness any question relevant to the answer given which, if the witness was re-called at the request of the prosecutor, the accused, or if he was re-called at the request of the accused, the prosecutor, requests him to put.

As to the meaning of "any question," see preceding note.

If an accused person has given evidence, the court may recall him without any application from the accused.

(B) *Witness for the defence upon his examination by the accused.* This will include the accused himself when he has given evidence.

(D) The power of calling a new witness should only be exercised by the court in cases of unforeseen witnesses becoming available, or of some exceptional circumstances, and should not be exercised to supplement any negligent conduct on the part of the prosecution. If a new witness is so called, the court should ordinarily allow him to be cross-examined by the other parties. If a witness is re-called, the questions asked should be limited to one or two questions relating to the evidence previously given by that witness.

It is very desirable that no witness should be called or re-called after the second address of the accused, as otherwise some irregularity is introduced into the proceedings; because, if new matter is introduced by such witness, it is necessary for the court, if so requested, to allow the prosecutor and the accused respectively to call witnesses in reply, and the accused to address the court with respect to such evidence, and the judge-advocate to supplement his summing up by a reference to such evidence. This remark, however, will not apply where the questions put to a witness re-called are limited as before suggested.

Friend of Accused and Counsel.

Accused may have a person to assist him on trial.

87. (A) An accused person may have a person to assist him during the trial, whether a legal adviser or any other person.

(B) A person so assisting him may advise him on all points, and suggest the questions to be put to witnesses; and, if an officer subject to military law, shall have the same rights and duties as counsel have under these rules, and the right of the accused shall be limited in like manner.

A person who is not subject to military law cannot, unless a counsel (as defined in Rule 93 (B)), under any circumstances, either examine witnesses orally or address the court, though he may be present in court and aid the accused.

The court should not allow the accused to address them in addition to his counsel, or officer acting as counsel, except as a witness or as prescribed by Rule 94 (A).

The accused will, of course, be allowed every facility for communicating with his friend, whether a military man or counsel or not.

Counsel allowed in certain courts-martial.

88. (A) Subject to these rules, counsel shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial:

(1) When held in the United Kingdom; and

(2) When held elsewhere than in the United Kingdom or India, if the Army Council or the convening officer, and when held in India, if the Commander-in-chief of the forces in India, or the convening officer, declares that it is expedient to allow the appearance of counsel thereat, and such a declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 87, the rules with respect to counsel will apply only to the courts-martial at which counsel are, under this rule, allowed to appear.

No one can appear as counsel unless he is a barrister or solicitor or otherwise qualified as provided by Rule 93. There is no restriction on the number of counsel.

A person acting as a counsel, though not bound to such strict impartiality as the prosecutor, must still recollect that he is assisting in the administration of justice, and must not be guilty of any unfairness or want of candour. In his address, however, he will have the same liberty as the accused, see Rule 60 (C); but he must be even more guarded in referring to the conduct of persons not before the court.

Requirements for appearance of counsel.

89. (A) Where an accused person gives notice of his intention to have counsel to assist him during the trial, either on the day on which he is informed of the charge or at any time not being less than seven days before the trial, or such shorter time before the trial as in the opinion of the court would have enabled the prosecutor to obtain, if he had thought fit, counsel to assist him during the trial, and would have enabled the authority appointing a judge-advocate to appoint counsel to act as judge-advocate at the trial, or where such notice as mentioned in (B) is given to the accused on the part of the prosecution, counsel may appear at the court-martial to assist the accused.

(B) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(C) The counsel who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such a case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rule 94, or except so far as the court permit him so to do.

(D) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 39 (C) and (D) shall not apply.

The counsel for the accused will not be allowed to call the accused or his wife as a witness except on the application of the accused himself.

Counsel for prosecution.

90. (A) The counsel for the prosecution should always make an opening address, and should state therein the substance of the charge against the accused, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

(B) The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 60 (B).

Counsel for accused.

91. (A) The counsel appearing on behalf of the accused has the like rights and is under the like obligations as are specified in Rule 60 (C) in the case of the accused.

(B) If the court ask the counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

General rules as to counsel.

92. (A) Counsel, whether for the prosecution or for the accused, will conform strictly to these rules and to the rules of civil courts in England relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

(B) If counsel puts to a witness a question as to a matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the witness objects to

answering the question, the court shall consider whether the witness should be compelled to answer it; and

(1) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question; but

(2) If they are of opinion that the imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court should disallow the question.

If the question is disallowed, counsel on both sides will refrain from further examining or commenting on the matter.

(C) Counsel will not state as a fact any matter which is not proved, or which he does not intend to prove in evidence.

(D) Counsel will not state what is his own opinion as to any matter of fact before the court.

(E) Counsel will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact.

(F) Counsel will treat the court and judge-advocate with due respect, and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

(B) If the question is put to the accused, the court will also have to consider whether, having regard to Rule 80, he should be compelled to answer it.

Qualification of counsel.

93. (A) Neither the prosecutor nor the accused has any right to object to counsel, if properly qualified.

(B) Counsel shall be deemed properly qualified—

(1) If in England or Ireland he is a barrister-at law or solicitor.

(2) If in Scotland he is an advocate or law agent.

(3) If in India he is a barrister-at-law or is a legal practitioner authorised to practise, with right of audience, in a court of sessions.

(4) If in any other part of His Majesty's dominions he is recognised by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England and as being subject to punishment or disability for a breach of professional rules.

It will be observed that a solicitor or law agent may act as counsel.

Statement by accused defended by counsel or officer.

94. (A) If an accused person assisted by counsel, or by an officer subject to military law, does not wish to give evidence on his own behalf, he may, if he thinks fit, at the close of the case for the prosecution and before the address by such counsel or officer, make a statement giving his account of the subject of the charges against him. The statement may be made either orally or in writing, but the accused making the statement shall not be sworn, and no question can be put to him by the court or by any other person.

(B) If the accused makes such a statement, the procedure will, so far as possible, be the same as if the accused had called witnesses to the facts of the case other than himself.

An accused person defended by counsel or by an officer acting as counsel has the option of either giving evidence himself or making a statement. He cannot be compelled either to give evidence or to make a statement, and he cannot be allowed to do both.

The statement of the accused differs from his evidence when he is defended by counsel in that the statement—

(1) Is not on oath;
(2) May be in writing;
(3) Is delivered as a consecutive statement and not as a series of answers to questions;
(4) Is not subject to the rules of evidence;
(5) Does not subject the accused to cross-examination;
(6) Will be delivered by the accused from the place where he is ordered to take up his position, and not from the place from which witnesses give evidence.

As to the weight to be allowed to a statement of the accused, see note to Rule 43.

(B) *As if . . . . facts of the case.*—The result of this is that, if the accused makes a statement, the prosecutor will be entitled to call witnesses in reply and to reply to the address of counsel or the officer acting as counsel for the accused. (See Rule 41 and Form, Appendix II, para. (8), p. 572.) But if the accused elects to give evidence instead of making a statement, and he is the only witness to the facts of the case called by the defence, the procedure will be in accordance with Rule 40, not with Rule 41.

Proceedings.

Record in proceedings of transactions of court-martial.

95. (A) At a court-martial the judge-advocate, or, if there is none, the president, shall record or cause to be recorded all transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the president will be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

(B) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*.

(C) Any question which has been objected to, and the tender of any evidence which has been objected to, shall, if the prosecutor or accused so requests, or the court think fit, be entered with the grounds of the objection, and the decision of the court thereon.

(D) Where any address by or on behalf of the prosecutor or person under accusation, or the summing up of the judge-advocate, is not in writing, it shall not be necessary to record the address or summing up in the proceedings further or otherwise than the court think proper, or in the case of the summing up than the judge-advocate requires, except that—

(1) The court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by or on behalf of the accused to each charge against him; and
(2) The court should also record any particular matters in the address by or on behalf of the prosecutor or accused person, which the prosecutor or accused person, as the case may be, requires.

(E) The court shall not enter in the proceedings any comment, or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president.

(A) The record must be taken in a clear and legible hand, without erasures. Interlineations or corrections must be avoided as much as possible; when made they should be verified by the president's initials. The pages

should be numbered and the sheets fastened together, and sufficient space must be left below the signature of the president for the remarks of the confirming authority. The station must be added, together with the date. See also Memoranda for Guidance of Courts-Martial, p. 582.

(B) *In a narrative form.*—That is to say, the material effect of a question and answer is to be written down as the evidence given by the witness, without distinguishing the question and answer. Thus, suppose the question to be "What did the accused do then?" and the answer to be "He left the room," the evidence taken down would be "Accused then left the room." Often, especially in cross-examination the question is irrelevant, or is made irrelevant by the answer; in such cases it will be unnecessary to take anything down.

If the evidence is not given in English, the interpretation into English as given to the court will be taken down, except that where a question or answer is required to be taken down in the proceedings *verbatim*, and is not in English, it must be taken down, as nearly as may be, in the English character, and the interpretation of it into English added.

(E) The court can state in a separate document any remark they think proper to make on the conduct of any person who appeared before them, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also, if they think the evidence shows that the accused has committed some offence not charged, *e.g.*, if he is charged with desertion in August, and the evidence shows that he deserted in June, they must acquit him, but may report separately the offence of June.

The court can scarcely be too guarded in expressing censure on individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report, although it will not be correct to enter such matter in the proceedings.

Custody and inspection of proceedings.

96. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and accused respectively, at all reasonable times before the court is closed to consider the finding..

Transmission of proceedings after finding.

97. (A) Where the court is a general court-martial the proceedings shall be at once sent by the person having the custody thereof, to such person as may be from time to time directed by His Majesty, and subject to the provisions of any such direction of His Majesty, as may be directed by the order convening the court.

(B) Where the court is a district court-martial, the proceedings shall be at once sent by the person having the custody thereof, to such person as may be directed by the order convening the court, or in default of any such direction to the confirming officer.

(C) Where the court is a regimental court-martial, the proceedings shall be at once sent by the president to the confirming officer.

(A) *Persons having the custody*, that is (see Rule 96), if it is a general court-martial, or a district court-martial with a judge-advocate, the judge-advocate, and in any other case, the president of the court.

The proceedings of general courts-martial will be sent, if held in the United Kingdom, to the Judge-Advocate-General in London; if held elsewhere than in the United Kingdom to the General or other officer having power to confirm the findings and sentences of general courts-martial. K.R., para. 592.

Where the court-martial is on a marine, the proceedings will be sent to the Admiralty and preserved there.

The same course should, so far as possible, be followed with field general courts-martial.

If from any cause a member of the court-martial has become confirming officer, he cannot (with an exception in the case of a field general court-martial) confirm the finding and sentence of the court, but must transmit the proceedings for confirmation to a superior officer who is competent to confirm the findings and sentences of the like description of court-martial (Army

Act, s. 54 (4)). This officer would ordinarily be as follows:—In the United Kingdom, if it is a regimental court-martial, the brigadier-general; if it is a district court-martial, the general officer commanding-in-chief the command. In India, if it is a general court-martial, the Commander-in-Chief; if it is a district court-martial, the next superior officer having authority to confirm the findings and sentences of general courts-martial, or, if there is none superior, the Commander-in-Chief; and if it is a regimental court-martial, the next superior officer having authority to convene a general or a district court-martial. Elsewhere than in India or the United Kingdom, the next superior officer who is competent to confirm; or if in a colony where there is no such officer, then the governor of the colony.

Any confirming officer has power to withhold his confirmation either wholly or partly, and refer the finding and sentence, so far as he withholds his confirmation, to a superior authority competent to confirm the finding and sentences of the like description of courts-martial (Army Act, section 54 (5)). The reference should be made to one of the officers mentioned above in this note.

The original proceedings, and not a copy, must be signed, and sent to the confirming officer. If the proceedings are recorded and signed in duplicate, one must be treated as a certified copy of the other, and not as the original.

The proceedings should be dated and signed immediately after the finding, in the case of acquittal on the charges (see Rule 45); and after the sentence, in case of a conviction (see Rule 50).

Preservation of proceedings.

98. (A) The proceedings of a court-martial (other than a regimental court-martial) shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate-General in London or India, or to the Admiralty, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

(B) The proceedings of a regimental court-martial, when promulgated, shall be preserved for not less than three years, with the regimental records of the corps to which the accused belonged, in manner from time to time directed by His Majesty's Regulations.

See note to the next Rule, and K.R., paras. 595, 1925.

Rate of payment for copies of proceedings.

99. The rate at which copies of the proceedings of a court-martial shall be supplied shall be the actual cost of the copy required, not exceeding twopence for every folio of seventy-two words; and the officer or person having the custody of those proceedings must, on demand made within the time limited for the preservation of the proceedings, supply a copy accordingly to any person tried by the court-martial.

Under s. 124 of the Army Act, a person tried by court-martial has a right, in the case of a general court-martial within seven years, and in the case of any other court-martial within three years, after the confirmation of the finding and sentence of the court, to have a copy of the proceedings, including those with respect to revision and confirmation, from the person who has the custody of them, on payment not exceeding 2*d.* for every folio of seventy-two words. This rule further limits the payment to the actual cost. If the cost per folio exceeds 2*d.*, the person requiring the copy can only be charged 2*d.*, and the rest of the cost must be defrayed by the public.

The above section of the Army Act might possibly be held not to apply to the case of a court-martial where the finding is of acquittal, and thus requires no confirmation, or where the finding and sentence are not confirmed; but the proceedings of every such court-martial will be kept, and the officer having the custody of them will give copies in accordance with the section and the rules.

Time limited.—See Rule 98.

Loss of proceedings.

100. (A) If the original proceedings of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the president of or the judge-advocate at the court-martial, may be accepted in lieu of the original.

(B) If there is no such copy, and sufficient evidence of the charge,

finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof lost.

(C) In any case above in this rule mentioned, the finding and sentence, if requiring confirmation, may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(D) If, in a case where confirmation of a finding or finding and sentence is required, the proceedings, or part thereof, were lost before confirmation, and there is no such copy or evidence, or the accused refuses such assent, as above mentioned, the accused may be tried again, and on the issue of an order convening the court for the trial, the finding and sentence of the previous court, of which the proceedings were so lost, shall be null.

(A) *Original proceedings.*—See note to Rule 97; and as to the impropriety of annexing documents to the proceedings, K.R., paras. 589, 590.

Sufficient evidence.—This may be obtained by the president, or some member of the court, writing out from memory the substance of the charge, finding, and sentence, and a summary of the transactions of the court, which should be authenticated by the signature of the members. A copy of the charge, however, should always be procured, if practicable, from the officer who framed it, or any other available source.

Judge-Advocate.

Appointment of judge-advocate and disqualification.

101. (A) Where the convening officer is authorised to appoint a judge-advocate, he shall, in the case of a general, and may, in the case of a district, court-martial, by order appoint a fit person to act as judge-advocate at the court-martial.

(B) An officer who is disqualified for sitting on a court-martial shall be disqualified for acting as judge-advocate at the court-martial.

(C) A court-martial shall not be invalid by reason of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person has been appointed; but this rule shall not relieve from responsibility the person who made the invalid appointment.

In the case of a general court-martial in the United Kingdom, the warrant to the convening officer does not give him power to appoint a judge-advocate. Application must be made to the Judge Advocate-General for the necessary authority.

(B) *Disqualified.*—See Rules 19 (B) and 22 (B) and notes thereon. A civilian who is under the same disqualification as is mentioned in Rule 19 (B) ought not to serve as judge-advocate, though not in terms disqualified by this rule; indeed, by the Army Act, s. 50 (3), a prosecutor or any witness for the prosecution, whether an officer or not, is disqualified for acting as judge-advocate.

(C) The object of this paragraph is merely to prevent a miscarriage of justice in consequence of any invalidity in the appointment of a judge-advocate; not to enable an officer, who is not authorised to appoint a judge-advocate, to appoint one.

An officer who, without due authority, attempts to appoint a judge-advocate, will justly incur censure.

A fit person.—A judge-advocate should of course be free from all suspicion of bias or prejudice; and should possess some acquaintance with military law and the rules of evidence.

Substitute on death, illness, or absence of judge-advocate.

102. If the judge-advocate dies, or from illness, or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance to the convening authority; and a person not disqualified to be judge-advocate may

be appointed by the proper authority, and he shall be sworn, and act as judge-advocate for the residue of the trial, or until the judge-advocate returns.

Sworn.—See Rules 27, 28. See Appendix II, Form of Proceedings, para. (5), p. 567.

Powers and duties of judge-advocate.

103. The powers and duties of a judge-advocate are as follows :—

(A) The prosecutor and the accused respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court ;

(B) At a court-martial he represents the Judge-Advocate-General ;

(C) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he will inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and will give his advice on any matter before the court.

(D) Any information or advice given to the court on any matter before the court will, if he or the court desire it, be entered in the proceedings.

(E) At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding.

(F) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion, and not overrule it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion.

(G) The judge-advocate has, equally with the president, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.

(H) In fulfilling his duties the judge-advocate will be careful to maintain an entirely impartial position.

(F) With reference to this paragraph, it is to be observed that the members of the court may become responsible to the ordinary civil courts of law in the event of the accused being unjustly convicted: see ch. VIII. This liability may turn on the question whether they exercised a *bonâ fide* judgment; and though they are not bound by the opinion of the judge-advocate, yet disregard of his advice, if that advice is right, might be held to show that they did not exercise a *bonâ fide* judgment. On the other hand, the adoption of the advice of the judge-advocate, even if wrong, may, in a doubtful case, practically exonerate the members from liability.

(G) *Permission of the court.*—This should never be refused unless the court consider that the judge-advocate is acting improperly, or in such a manner as to obstruct the proceedings, and they should always record their reasons for refusing the permission.

As to the duty of the president towards the accused see Rule 59 (B) and note.

Exception from Rules.

Suspension of rules on the ground of military exigencies or the necessities of discipline.

104. Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline, render it impossible or inexpedient to observe any of the rules 4 (C), (D), and (E), 5, 8, 13, and 14, he may, by order under his hand, make a declaration to that effect, specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in the declaration had not been contained herein; and the declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial.

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

The nature, and not merely the existence, of military exigencies, or the necessities of discipline, must be stated in the order.

The power conferred by this rule should hardly ever be exercised, except when on active service, and then only if absolutely necessary. It may, however, occasionally be necessary to resort to it on the eve of embarkation, or on the line of march, or possibly in an extreme case, where the necessities of discipline require a very speedy trial and punishment.

In exercising the power under the rule, the officer must consider whether it is necessary to dispense with all the rules mentioned. For example, the observance of Rule 4 (C), (D), and (E) may be practicable, although that of Rule 14 is not so. If Rules 4 (C), (D), and (E), and 8 are suspended by the order, some means must be taken to inform the accused of the charge, and of the names of the witnesses, and of the nature of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instauce, by not having received any summary of evidence.

The power of dispensing with Rule 13 is only intended to be exercised, in case it is necessary to try a person before he can communicate with any witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend on the spot.

Full opportunity of making his defence.—The accused will not have this opportunity unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso, and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

Rule 14 (C) and (D) must always be complied with, and Rule 14 (A) and (B), if not complied with within the time there mentioned, should be complied with as long as possible before the assembly of the court.

Field General Court-Martial.

The foregoing rules shall not, save as hereinafter mentioned, apply to field general courts-martial, which shall be subject to the following rules:—

Convening of field general court-martial.

105. (A) A field general court-martial may be convened—

(i) By any officer in command of a detachment or portion of troops in any country beyond the seas when not on active service, where complaint is made to him that an offence has been committed by any person subject to military

law under his command against the property or person of any inhabitant of or resident in that country; or

(ii) By the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a body of forces on active service, where it appears to him, on complaint or otherwise, that a person subject to military law has committed an offence.

(B) An officer in command of a detachment or portion of troops not on active service should not convene a field general court-martial in His Majesty's dominions unless he is authorised so to do by the general officer commanding the forces to which the officer belongs.

(C) An officer, before convening a field general court-martial for the trial of a person, shall be satisfied that it is not practicable to try the person by an ordinary general court-martial, and—where the officer is below the rank of field officer and is not a commanding officer—be further satisfied that it is not practicable to delay the trial for reference to a superior officer.

See generally as to field general courts-martial s. 49 of the Army Act, and ch. V, paras. 25 and 26.

Under s. 49 and para. (C) the court is not to be convened unless the convening officer is satisfied that it is not practicable to try the offender by an ordinary court-martial; and para. (C) also requires him, if he is below the rank of field officer, and is not a commanding officer, to be satisfied that it is not practicable to delay for reference to a superior officer. Further, under para. (B) an officer in command of a detachment or portion of troops not on active service is not to convene the court in His Majesty's dominions, unless authorised to do so by the general officer commanding the forces to which he belongs.

The court should not, as a rule, be convened for the trial of an offence not committed on active service, in any place where ordinary civil justice is administered.

Subject to the restrictions imposed by s. 49 and by this rule, a field general court-martial can try any offence, and can try an officer.

Practicable, see Rule 122 (A).

Composition of field general court-martial.

106. (A) Not less than three officers must be appointed.

(B) If the convening officer is of opinion that three other officers are not available to form the court, he may appoint himself president of the court; but if he is of opinion that three other officers are available, or that although three other officers are not available he is himself by reason of his position as confirming officer or otherwise not available, he must appoint as president some other officer:—

Provided that the convening officer—

(i) Must not appoint as president any officer below the rank of field officer, unless he is himself below that rank, or unless in his opinion a field officer is not available; and

(ii) Where under the foregoing provision he has power to appoint as president an officer below the rank of field officer, must not appoint an officer below the rank of captain, unless in his opinion a captain is not available.

(C) The officers should have held commissions for not less than one year, and if in the opinion of the convening officer any officers are available who have held commissions for not less than three years, he should appoint those officers in preference to officers of less service.

(D) The provost-marshal, an assistant provost-marshal, and an officer who is prosecutor or a witness for the prosecution, must not

be appointed a member of the court, but save as aforesaid any available officers may be appointed to sit.

(A) This gives the ordinary rule for the constitution of a field general court-martial. In case of military exigencies, two officers only may be appointed, if three are not available. Army Act, s. 49 (1) (*b*) and Rule 107 (A). Speaking generally, the rules which govern the procedure of ordinary courts-martial should be observed as far as practicable.

(B) *Available.* See Rule 122 (A).

As to field general court-martial where military exigencies occur.

107. (A) Where the convening officer is satisfied that military exigencies or other circumstances prevent compliance with Rule 106, and that it is not practicable to delay the trial for the purpose of such compliance, then if, in his opinion, three officers are not available, two will be appointed.

(B) The court may be convened, and the proceedings of the court recorded in accordance with the form in the Second Appendix to these rules; but if it appears to the convening officer that military exigencies or other circumstances prevent the use of that form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable must be kept by the provost-marshal or assistant provost-marshal, if present, or if not, by the president and the officer charged with the promulgation, stating as near as may be the particulars set forth in the form, and stating at least the name (or, if the name is not known, the description) of the offender, the offence charged, the finding, sentence, and confirmation, and any recommendation to mercy.

(C) The convening officer will report to superior authority for the information of the officer who, if a field general court-martial had not been convened, would have had power to convene a general court-martial to try the accused, the military exigencies or other circumstances which prevented compliance with Rule 106, or the use of the form in the Second Appendix.

Before resorting to the exceptional course allowed by this rule, the convening officer must satisfy himself of the military exigencies or other circumstances which justify it.

The accused must always have full opportunity of making his defence. See Rule 116.

Practicable: available: see Rule 122 (A).

(B) For Form, see Appendix II, p. 580.

Charge.

108. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act.

Trial of several accused persons.

109. The court may be sworn at the same time to try any number of accused persons then present before it, but, except so far as accused persons are tried together for an offence committed collectively, the trial of each accused person will be separate.

Challenge.

110. (A) The names of the president and members of the court will be read over in the hearing of the accused persons, and they will be asked if any of them objects to be tried by any of those officers.

(B) If any accused person objects to an officer, and any member of the court thinks the objection reasonable, steps will be taken to try the accused before a court composed of officers against whom he has no reasonable objection.

Swearing court.

111. (A) The president will administer to the other members of the court, and a member of the court, when sworn, will administer to the president, the following oath:—

"You , do swear that you will well and truly try the accused person [*or* persons] before the court according to the evidence, and that you will duly administer justice according

to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not, on any account, at any time whatsoever, disclose of discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD."

(B) The following oath shall be administered by a member of the court to every interpreter :—

"You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you GOD."

(A) See note to Army Act, s. 52 (1).

Arraignment.

112. When the court are sworn, the president will state to the accused then to be tried the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the accused whether he is guilty or not of the offence.

Plea to jurisdiction.

113. If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.

See Rule 34, and note.

Evidence.

114. (A) The witnesses for the prosecution will be called, and the accused will be allowed to cross-examine them, and to call any available witnesses for his defence.

(B) The following oath shall be administered by a member of the court to every witness :—

"The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth, So help you GOD."

(C) The President of the court shall take down, or cause to be taken down, a short summary of the evidence of all the witnesses at the trial, and the summary so taken down shall be attached to the proceedings :

Provided that, if it appears to the convening officer that military exigencies or other circumstances prevent compliance with this provision, the trial may be carried on without any summary being taken down, but in every such case the convening officer shall report to superior authority in the same manner as he is required to do under the provisions of Rule 107 (C).

The accused will be able on his own application to give evidence himself or to call his wife as a witness (see Rule 80).

Mode of swearing witness, and solemn declaration.

115. (A) A member of the court or a witness may take an oath with such ceremonies and in such manner as makes the oath binding on his conscience, and the words "you" and "So help you GOD" may be varied or omitted for the purpose.

Solemn declaration by witness.

(B) If a member of the court or a witness or an interpreter objects to take an oath, or is objected to as incompetent to take an oath, and the court is satisfied of the sincerity of the objection, or, where the competence of the person to take the oath is objected to, of the oath having no binding effect upon the conscience of the person, the court shall permit the person, in lieu of an oath, to make a solemn declaration, which will be in the same form as the oath, with the substitution of "I" for "you," and with the omission of "You do swear that" and "So help you GOD," and with the substitution or addition, where necessary, of "I do solemnly declare that."

See Rule 30, and note, and Army Act, s. 52 (4).

116. The accused will be asked what he has to say in his defence, and shall be allowed to make his defence. Defence.

117. (A) In the case of an equality of opinions on the finding, the accused will be acquitted. Acquittal.

(B) The finding of acquittal requires no confirmation, and, if it relates to all the offences charged against an accused person, will be declared at the time of the finding, and the accused will thereupon be discharged from custody.

118. (A) The court, if consisting of three or more officers, may award any sentence which a general court-martial can award; but if the court pass sentence of death, the whole court must concur. Sentence.

(B) The court, if consisting of two officers, may award any sentence authorised for the offence, not exceeding field punishment, or two years' imprisonment with hard labour.

(C) Any recommendation to mercy will be attached to the proceedings, and communicated to the accused, together with the finding and sentence.

Field punishment. See Field Punishment Rules, p. 598.

119. (A) Except as provided by Rules 110 (B), 117, and 118, every question will be determined by the majority of opinions, and in case of equality, the president shall have a second or casting vote. General provisions as to votes and powers of court.

(B) If, after the commencement of the trial, the court consider that any accused person named in the schedule to the order convening the court should be tried by an ordinary court-martial, the court may strike the name of that person out of the schedule.

(C) The proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members, when the court may be closed.

(D) The court may adjourn from time to time, and may, if necessary, view any place.

120. (A) Except in the case of acquittal, the finding and sentence of the court shall be valid only in so far as they are confirmed by proper military authority. Confirmation.

(B) The provost-marshal or an assistant provost-marshal cannot confirm the finding or sentence of the court.

(C) A prosecutor of an accused person or a member of the court trying an accused person cannot confirm the finding or sentence of the court as regards that person, except that if a member of the court trying an accused person would otherwise under these rules have power to confirm the sentence, and is of opinion that it is not practicable to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(D) In any case where a sentence of death, penal servitude, imprisonment, or detention, is passed, the confirming authority shall after confirmation forthwith transmit the proceedings to the officer in chief command of the forces in the field comprising the force with which the accused is present, and a sentence of death or penal servitude shall not be carried into effect pending the decision of that officer on the case:—

Provided that—

(i) The confirming officer shall not be required to refer any case to the officer in chief command in the field if in confirming the sentence he commutes it so as to make it a punishment less than detention; and

(ii) Where the confirming officer is of opinion that, by reason of the nature of the country the great distance, or the

operations of the enemy, it is not practicable to delay the case for the purpose of referring it to the officer in chief command in the field, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the accused is present at the date of the sentence.

(E) Subject to the preceding provisions of this Rule, the finding and sentence of a field general court-martial as regards any person may be confirmed—

(i) Where the court was convened by an officer in command of a detachment or portion of any troops not on active service by an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops form part; and

(ii) Where the court was convened by an officer in command of any troops on active service, by the senior officer, not being an officer below the rank of field officer, present at the place where the trial takes place, or if there is no officer not below that rank present at that place, by the senior officer not below the rank of field officer present at any other place.

(F) Any officer may, if he thinks it desirable, reserve any finding or sentence for confirmation by superior authority.

(G) A confirming authority shall not send back a finding and sentence for revision more than once, nor recommend the increase of a sentence, and on any revision the court shall not take further evidence nor increase the sentence.

Practicable. See Rule 122 (A).

(A) This is the same provision as is enacted in the Army Act, s. 54 (6) for ordinary courts-martial (see note to that section, and ch. V, para. 5).

(B-E) The general effect is this. The ordinary rule for the confirmation of the finding and sentence of a field general court-martial will be (as laid down in (E)) that it is confirmed where troops are not on active service, by some officer authorised to confirm the findings and sentences of general courts-martial; and where troops are on active service, by the senior officer (if of field rank) on the spot, and if the senior officer is not of that rank, by the nearest available senior officer of that rank.

If the sentence is one of the severity of detention or upwards, it must be referred to the general in chief command in the field; and a sentence of death or penal servitude must not be carried out pending his decision. But if communication with that officer is impracticable, or so difficult as to cause too great delay, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the accused is present.

(F) enables any officer to refer a confirmation to superior authority, or to confirm the finding and refer the sentence.

(G) applies the law enacted for ordinary courts-martial by Army Act, s. 54 (2).

(B) and (C) give effect to the ordinary rule that a prosecutor or a member of the court is not to confirm, and the rule is extended to the provost-marshal and his assistant, as if he were the prosecutor.

Application of rules.

121. The foregoing rules—54 (Mitigation of sentence on partial confirmation), 56 (Confirmation notwithstanding informality in or excess of punishment), 97 (Transmission of proceedings after finding), 98 (Preservation of proceedings), 99 (Rate of payment for copies of proceedings), and 100 (Loss of proceedings)—shall, so far as practicable, apply as if a field general court-martial were a district court-martial.

Definitions.

122. (A) In the rules with respect to field general courts-martial, unless the context otherwise requires, the expressions "practicable" and "available" mean respectively practicable and available, having due regard to the public service.

(B) The expression "commanding officer of a corps or portion of a corps" means the officer whose duty it is under the provisions of His Majesty's Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against any of the persons belonging to the corps or portion of a corps who are present under his command, of having committed an offence, that is, to dispose of the charge on his own authority or to refer it to superior authority.

(B) See note to Rule 129.

Evidence of opinion of convening and confirming officer.

123. Any statement in an order convening a field general court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding or sentence of a field general court-martial as to the opinion of the confirming officer, shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

PART II.—MISCELLANEOUS.

Regulations for Courts of Inquiry, other than Courts of Inquiry held under Section 72 of the Army Act.

Courts of inquiry.

124. (A) A court of inquiry may be assembled by the Army Council or by the officer in command of any body of troops, whether belonging to one or more corps.

(B) The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

(C) The court will be guided by the written instructions of the officer who assembled the court. The instructions should be full and specific, and must state the general character of the information required from the court in their report.

(D) A court of inquiry is an assembly of officers directed by a commanding officer to collect evidence and report with respect to a transaction into which he cannot conveniently himself make inquiry.

(E) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

(F) Whenever any inquiry affects the character or military reputation of an officer or soldier, full opportunity must be afforded to the officer or soldier of being present throughout the inquiry, and of making any statement and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witnesses in defence of his character or military reputation.

(G) It is the duty of a court of inquiry to put such questions to a witness as they think desirable for testing the truth or accuracy of any evidence he has given, and otherwise for eliciting the truth.

(H) When a court of inquiry is held on recovered prisoners of war, and in any other case in which the officer who assembled the court has so directed, the evidence will be taken on oath, in which case the court will administer the same oath or solemn declaration to witnesses as if the court were a court-martial.

The officer who assembled the court will, when the court is held on a returned prisoner of war, direct the court to record their opinion whether the officer or soldier concerned was taken prisoner by reason of the chances of war, or through neglect or misconduct on his part, and the officer who assembled the court will record his own opinion. In other cases the court will give no opinion on the conduct of any officer or soldier unless so directed by the officer who assembled the court.

(I) The members of the court will not themselves be sworn, but when the court is a court of inquiry on recovered prisoners of war the members will make the following declaration :—

I, A.B. do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which became a prisoner of war, *according to the true spirit and meaning of His Majesty's Orders and Regulations on this head; and I do further declare, upon my honour, that I will not on any account, or at any time, disclose or discover my own vote or opinion, or that of any particular member of the court, unless required to do so by competent authority.*

(J) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(K) The whole of the proceedings of a court of inquiry will be forwarded by the president to the officer who assembled the court.

(L) The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against an officer or soldier, nor shall any evidence respecting the proceedings of the court be given against any officer or soldier, except upon the trial of any officer or soldier under Section 29 of the Army Act, for wilfully giving false evidence before that court.

(M) An officer or soldier who is tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, and, unless the Army Council see reason to order otherwise, an officer or soldier whose character or military reputation is, in the opinion of the Army Council, affected by anything in the evidence before, or in the report of, a court of inquiry, shall be entitled to a copy of the proceedings of the court, including any report made by the court, on payment of the actual cost of the copy required, not exceeding twopence for every folio of 72 words.

See generally as to courts of inquiry, K.R., paras. 666-678.

As to privilege of report of court, see ch. VIII, para. 77; and as to privilege of witnesses, *ib.*, para. 85.

A court of inquiry has no power to compel the attendance of civilian witnesses.

Regulations for Courts of Inquiry under Section 72 of the Army Act, for the purpose of determining the illegal Absence of Soldiers.

Courts of inquiry as to illegal absence under s. 72.

125. (A) A court of inquiry under Section 72 of the Army Act, will, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in that section.

(B) They will take down the evidence given them in writing, and at the end of the proceedings will make a declaration of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C) The commanding officer of the absent soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.

(D) The court of inquiry will examine all witnesses who may be desirous of coming forward on behalf of the absentee, and will put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given, and otherwise for eliciting the truth, and the court in making their declaration, will give due weight to the evidence of all such witnesses.

(E) A court of inquiry will administer the same oath or solemn declaration to the witnesses as if the court were a court-martial, but the members of such court will not themselves be sworn.

See K.R., para. 673.
(E) *Same oath.* See Rule 82.

Explanation of "Prescribed" and "Commanding Officer."

Prescribed officer for committing, removing, and commuting authority, and for the purpose of ss. 43 and 73.

126. (A) The committing authority under ss. 59, 60, 61, 64, and 65 of the Army Act, shall include :—

(1) The general officer commanding in chief the command where the military convict or soldier under sentence may for the time being be ; the officer in charge of administration of that command ; the general or other officer commanding the district, division, or independent brigade, in or with which the military convict or soldier under sentence may for the time being be ; and the commander of the coast defences, grouped regimental district or station, where the military convict or soldier under sentence may for the time being be ; and

(2) When the convict or soldier under sentence is in India, the lieutenant-general commanding the forces in the Northern, Western, or Eastern command, and his deputy adjutant-general ; the general or other officer in command of a division, and his assistant adjutant generals ; the general or other officer in command of a brigade which does not form part of any division, and his deputy assistant adjutant-general or brigade major.

But any officer in this sub-section mentioned shall not, by virtue thereof, be a discharging authority.

(B) The removing authority under section 64 of the said Act, as respects a soldier under sentence in the United Kingdom, and the competent military authority under section 67 of the said Act, as respects a soldier under sentence elsewhere than in India, shall include any of the officers named in paragraph (1) of sub-section (A) of this rule ; and as regards a soldier under sentence for the time being in India, the competent military authority under section 67 of the said Act shall include any of the officers named in paragraph (2) of sub-section (A) of this rule.

(C) Any of the officers named in paragraph (1) of sub-section (A) of this rule, and the adjutant-general, as respects persons undergoing sentence in any place whatever, shall be authorities having power under section 57 of the said Act, to mitigate, remit, or commute punishment awarded by sentence of a court-martial.

(D) The discharging authority under sections 64 and 65 of the Army Act shall include :—

In the United Kingdom, the officer commanding the command in which the soldier under sentence is, or an officer not under the rank of brigadier-general in or under whose command the soldier under sentence may for the time being be, provided he does not hold a command inferior to that of the officer who confirmed the sentence.

In India the lieutenant-general commanding the forces (or deputy adjutant-general) in the Northern, Western or Eastern Command, or an officer not under the rank of brigadier-general in or under whose command the soldier under sentence may for the time being be, provided he does not hold a command inferior to that of the officer who confirmed the sentence.

In a colony, an officer not under the rank of brigadier-general in or under whose command the soldier under sentence may for the time being be, provided he does not hold a command inferior to that of the officer who confirmed the sentence.

(E) The general officer to whom a complaint may be made in pursuance of section 43 of the Army Act shall be :—

(i) As respects a soldier serving elsewhere than in India, the general officer commanding-in-chief the command, or the general officer commanding the district, or station, where the soldier may for the time being be ; and

(ii) As respects a soldier serving in India, the commander-in-chief of the forces in India, or the lieutenant-general commanding the forces in the Northern, Western, or Eastern command, or the general officer in command of a division, or the general officer in command of a brigade.

(F) The competent military authority for the purpose of section 73 (3) of the Army Act shall, as respects a soldier serving in the United Kingdom, include any officer, not under the rank of brigadier-general, in or under whose command the soldier may for the time being be.

Prescribed procedure for court of inquest (India) under s. 133.

127. When a court of inquest is required to be convened by the commanding officer under section 133 of the Army Act, the court shall be convened and inquest held in manner following :—

(*a*) The commanding officer of the station will order the court to assemble.

(*b*) The court will consist of three officers and of a medical officer.

(*c*) The court shall not take evidence on oath, and shall warn every person who is accused or suspected that he is not required to give evidence criminating himself, but that any statement or evidence he gives may be used against him in the event of any further proceedings being instituted.

(*d*) The court, after hearing the evidence, shall report to the officer commanding the station, the evidence as to the cause of the death, together with the written opinion of the medical officer of the court, on his examination of the body, as to the cause of death.

(*e*) The commanding officer shall, as soon as practicable, forward the report of the court to the nearest civil magistrate having authority to hold an inquest on death, who may proceed thereon as if he had himself held the inquest.

Prescribed officer for competent military authority (s. 161).

128. The competent military authority in Part II of the Army Act, shall include the following officers, viz. :—

(i) In India,

The Commander-in-Chief of the forces in India, the lieutenant-general commanding the forces in the Northern, Western, or Eastern command; the general or other officer in command of a division; and the general or other officer in command of a brigade which does not form part of any division.

(ii) In any place situate out of India, and out of the United Kingdom, the general or other officer commanding the forces in that place; the general or other officer in charge of administration, or in command of a division or independent brigade in that place.

In addition to the above-mentioned officers it also includes :—

(iii) For the purposes of sections 80, 82, 84, and 85 of the said Act, the commanding officer of the soldier, and every officer superior in command to that commanding officer, and not hereinbefore included :

(iv) For the purposes of any transfer by consent under section 83 (2) any authority superior in command to the commanding officer of the soldier.

(v) For the purposes of section 99, any officer having power to convene a district court-martial for the trial of the soldier.

(vi) Such officer as may be directed from time to time by His Majesty's Regulations to perform in any place or for any purpose specified in that behalf the duty of the competent military authority.

(vi) See K.R., para. 597, directing other officers to act as the competent military authority for the purpose of S. 83 (7) of the Army Act.

Definition of "commanding officer."

129. The expression "commanding officer," as used in the sections of the Army Act, relating to "*Courts-Martial*," to the "*Execution of Sentence*," and to the "*Power of Commanding Officer*," and in the provisions consequential thereon, and in these Rules, means, in relation to any person, the officer whose duty it is, under the provisions of His Majesty's regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is, to dispose of it on his own authority.

It also, so far as relates to the summary award of any punishments for offences, being punishments which under the provisions of His Majesty's Regulations an officer commanding a company, troop, or battery, is authorised to award, and so far as relates to a summary finding in a case of absence without leave, includes the officer commanding a company, troop, or battery.

Every officer, however temporary or casual his command over a person accused may be, will be within this definition if the custom of the service enables him to tell off the accused. In all of these rules "commanding officer" has the meaning given to it by this rule.

In the portions of the Army Act not above mentioned, "commanding officer" is not limited to the commanding officer as defined by this rule, though the commanding officer as so defined is often (see notes) the proper officer to act. See K. R., para. 456.

It is laid down in K.R., paras. 457, 458, that the commanding officer of a detachment has the same power of awarding summary punishment as the commmanding officer of the corps, subject to any restrictions that may be imposed by superior authority.

As to the second paragraph of the Rule, see K.R., paras. 484 and 501.

Prisons and Detention Barracks Abroad.

Committal and removal of prisoners in one colony to authorised prisons in other colonies.

130. A military prisoner who has been sentenced to imprisonment in any place out of the United Kingdom may, if he is in any place mentioned in the first column of the following table, be committed, or, if he has been committed to prison, be removed, if occasion arises, to a *military* prison or detention barrack wherever situate, or to an *authorised* prison situate in any place mentioned opposite thereto in the second column of the following table :—

TABLE.

A soldier under sentence of imprisonment, and being in any place in any of the groups following :—	May be committed, or, if he has been committed to a prison, may be removed, to an authorised prison in—
GROUP I. (American and Mediterranean.)	
Canada. Newfoundland. Bermuda. Gibraltar. Malta. Cyprus. Egypt.	Any place in Group I (American and Mediterranean); or In Group III (South African); or In Group VII.
GROUP II. (West Indian.)	
West Indies, including— Jamaica. Turks and Caicos Islands. Bahamas. Barbados and Windward Islands. Trinidad and Tobago. Leeward Islands. Honduras. British Guiana.	Any place in Group II (West Indian); or In Group I (American and Mediterranean); or In Group III (South African); or In Group VII.
GROUP III. (South African.)	
South Africa, including— Cape of Good Hope. Natal. Griqualand West. Transvaal Colony. Orange River Colony. St. Helena.	Any place in Group III (South African) or In Group I (American and Mediterranean); or In Group V (Australasian); or In Group VII.
GROUP IV. (West African.)	
West African Colonies, including— Sierra Leone. Gambia. Gold Coast. Lagos.	Any place in Group IV (West African); or In Group I (American and Mediterranean); or In Group II (West Indian); or In Group III (South African); or In Group VII.

TABLE—*continued.*

GROUP V.	
(Australasian.)	
Commonwealth of Australia. New Zealand. Fiji. Falkland Islands.	Any place in Group V (Australasian); or In Group I (American and Mediterranean); or In Group III (South African); or In Group VII.
GROUP VI.	
India, as defined by the Army Act, and including— Aden and Perim. Mauritius. Ceylon. Hong Kong. Straits Settlements. Labuan.	Any place in Group VI; or In Group I (American and Mediterranean); or In Group III (South African); or In Group V (Australasian); or In Group VII.
GROUP VII.	
Channel Islands and Isle of Man.	Any place in Group VII.

This rule shall not authorise any removal from a prison in the United Kingdom to a prison elsewhere.

This rule is rendered necessary by Army Act, s. 65 (1), (*c*), under which a prisoner can only be confined in any authorised prison in any part of His Majesty's dominions other than that in which the sentence was passed, and other than the United Kingdom, if the prison is prescribed.

The main object of this rule, as regards a colony where there is no military prison, is to enable a prisoner to be removed with, or sent to, his regiment if the regiment is serving in that colony, but not to allow prisoners in any other case to be sent to that colony. No prisoners will be committed or removed to a colony where troops are not serving, without the consent of the government of that colony.

Prisoners will not, except for special reasons which must be at once reported to a superior authority for the information of the Secretary of State for War, be removed to a *military* prison in any place, if they could not be removed under this rule to an *authorised* prison in that place.

The Isle of Man, Channel Islands, and Cyprus are declared to be colonies for the purpose of imprisonment by the Army Act, s. 187 (2), 190 (23).

PART III.—SUPPLEMENTAL.

131. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office for the purpose of these rules, may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service. Exercise of powers vested in holder of military office.

See Army Act, s. 171.

Cases unprovided for.

132. In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.

Forms in Appendices.

133. (A) The forms in the appendices to these rules should be followed in all cases in which they are applicable, and when used shall be valid in law, but a deviation from any such form will not, by reason only of such deviation, render any charge, warrant, order, proceedings, or other document invalid.

(B) An omission of any such form will not, by reason only of the omission, render any act or thing invalid.

(C) The notes to, and instructions in, the forms will be considered as instructions which it is expedient to follow in all cases to which the notes and instructions apply.

The Army Council may append to any of the forms when issued for use such further notes as they think fit, and any such notes will be considered as instructions which it is expedient to follow in all cases to which they apply.

Definitions.

134. In these rules, unless the context otherwise requires—

(A) The expression "proper military authority," when used in relation to any power, duty, act, or matter, means such military authority as, in pursuance of His Majesty's Regulations or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) The expression "Army Act" includes any Act whether passed before or after the date of these rules, which amends or applies the Army Act; also any Act, whether passed before or after the date of these rules, which enacts an offence which is triable by court-martial.

(C) In any sentence of imprisonment, detention or field punishment passed after the date on which these rules come into operation the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month."

(D) Other expressions have the same meaning as if these rules formed part of the Army Act, and accordingly words in the singular number include the plural, and words in the plural number include the singular, and the masculine gender includes the feminine gender.

(B) See, for instance, the Volunteer Act, 1863, the Yeomanry Acts, the Reserve Forces Act, 1882, and the Militia Act 1882.

(D) See particularly s. 190, and note thereto. This rule does not extend to proceedings and commitments and other documents.

Construction of rules.

135. (A) Time, for the purposes of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, and Christmas Day, but any time reckoned for the purposes of Rule 6, or of any punishment or of any deduction of pay, shall include those days.

(B) Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless the authority, on account of military exigencies or otherwise, dispenses with the writing.

(C) These rules shall apply to a person subject to military law as an officer, in like manner, so nearly as circumstances admit, as if he were an officer, and to a person subject to military law as a soldier, in like manner, so nearly as circumstances admit, as if he were a soldier, subject nevertheless to the restrictions contained in the

Army Act, and to this qualification—that nothing in these rules shall confer on any person not an officer or soldier any jurisdiction or power as an officer or soldier.

(D) Nothing in these rules shall be construed to be contrary to or inconsistent with any provision of the Army Act.

(C) *Subject to military law as an officer or as a soldier.*—See Army Act, ss. 175, 176.

Application of rules to Channel Islands, and Isle of Man.

136. These rules shall, save as otherwise expressly provided, apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom.

The Channel Islands and Isle of Man are Colonies for the purpose of imprisonment and of detention. See Army Act, s. 187 (2), and Rule 130.

Extent of application of rules.

137. These rules shall apply in every place, whether within or without His Majesty's dominions.

Short title.

138. These rules may be cited as the Rules of Procedure, 1907.

Commencement of rules.

139. (A) The foregoing rules shall, if promulgated in any general order in any place, come into full force in that place from and after the date named in the general order, and so far as they are not already in operation on the thirty-first day of December next after the date thereof shall come into operation on that day; and on the day on which these rules come into operation in any place, the Rules of Procedure, 1899, as amended by any subsequent rules, so far as they are then in force, shall determine.

(B) Any court-martial, proceeding, or thing held, done, or commenced under the last-mentioned Rules of Procedure, shall be as valid, and may be completed and carried into effect as if those rules were still in force.

His Majesty has made the foregoing Rules in pursuance of the Army Act, and those Rules will therefore be observed by all persons concerned.

(Signed) R. B. HALDANE.

War Office,
20th August, 1907.

The foregoing Rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further Rules are made in pursuance of Section seventy of the said Act.

(Signed) TWEEDMOUTH.
(Signed) J. A. FISHER.

Admiralty,
20th August, 1907.

Appendices to Rules of Procedure, 1907.

FIRST APPENDIX. App. I.

FORMS OF CHARGES.

NOTE AS TO USE OF FORMS OF CHARGES.

(1.) Every charge-sheet will begin as shown in the forms in Part I of the forms of charges which are given as examples.

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or

App. I. soldier, and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 10.)

(2.) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3.) Each charge will consist of two parts: a statement of the offence, and a statement of the particulars. (Rule 11 (B).)

(4.) The statement of the offence will be in one of the forms in Part II.

(5.) Where two or more words or expressions occur in Part II, bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6.) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7.) Where two or more of the words or expressions bracketed together appear, when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. (See Rule 11 (A).)

(8.) For example, a man may be charged with making away with his arms, ammunition, *and* necessaries; but a charge for making away with his arms, ammunition, *or* necessaries will be a bad charge.

(9.) A man should not be charged, however, with making away with by pawning *and* selling his arms and necessaries, as in such case he is charged with at least two distinct offences, which ought to be included in at least two distinct charges, one for making away with by *pawning* his arms and necessaries, the other for making away with by *selling* his arms and necessaries; but he may, if desirable, be charged in four distinct charges: one for pawning his arms, another for pawning his necessaries; a third for selling his arms, and a fourth for selling his necessaries.

(10.) In the former example (para. 8) the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles. In the second example (para. 9) there are two distinct offences of making away with his articles—(*a*) by pawning, (*b*) by selling—although committed in respect of the same objects—arms and necessaries.

(11.) In a few cases, shown in italics bracketed thus [ ] (as for instance, in s. 4 (1 *b*), s. 6 (1), (*e*), (*g*), and (*h*), and s. 24), words may be inserted in the charge which are not in the Act. In these cases the Act contains a general expression such as "other person," or "other place," or "other means," and the officer framing the charge must omit these words, and insert a description of the person, place, or means.

(12.) Words inserted in brackets, thus [ ], without italics, must be adopted or not according to circumstances. For example, if the offender was not on active service, the words, "when on active service," must be omitted.

(13.) In some cases (for example, s. 10 (4), s. 14, s. 15 (3), s. 16, and ss. 18, 27 (3) (4), and 37), the offence can only be committed

by an officer or by a non-commissioned officer or by a soldier. The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the accused is or is not an officer, non-commissioned officer, or soldier, and therefore capable of committing the offence. Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit. In some cases the offence, even though not expressed in the Act to be limited to an officer or soldier, can, from the nature of things, only be committed by an officer or soldier. For example, the offence in s. 4 (1) (*a*) can only be committed by an officer, while the offence of losing regimental necessaries (s. 24) can only be committed by a soldier.

(14.) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," &c., or "in having," &c., and stating in brief ordinary language what the accused is alleged to have done.

(15.) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(16.) In the case of several charges, the particulars in one charge may refer to the particulars in another (Rule 11 (E)); as, for example, "in having done the acts alleged in the particulars to the first charge," or "in that, at the place and time aforesaid, he was deficient in the necessaries above mentioned in the second charge, which it was his duty to have." If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(17.) The statement of particulars should specify all the ingredients necessary to constitute the offence: for example, if the charge is under s. 9 (2), for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command; while, if the charge is under s. 9 (1), the "particulars" should also show how the command was given personally, and how the accused showed a wilful defiance of authority.

(18.) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town or "the line of march," and, if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance, "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(19.) The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, the case of absence without leave or being drunk on a post.

(20.) In some cases the offence may be stated with most accuracy as having been committed between two days or between two times: as, for instance, in the case of absence without leave, or of quitting a post; in other cases "between" may be used in consequence of the exact day or exact time not being known.

App. I.

(21.) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(22.) In many cases, as, for instance, where the defence is an alibi, the time and place may be of the utmost importance in proving that alibi, although it is not the essence of the offence.

(23.) There must be added at the end of the "particulars" a statement of any expenses, loss, or damage in respect of which the court-martial will be asked to award compensation under Section 137 or 138 (Rule 11 (F)). For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment, an averment to the effect that the accused thereby obtained a free kit, value* pounds, and in the case of a charge under s. 10 (2) or (3), that the accused thereby damaged 's coat, to the value of shillings, and 's watch to the value of shillings; and other statements may be made, according to the facts.

(24.) If, however, the expenses, loss, or damage were caused by an act or omission which constitutes another offence, specially specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts, and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(25.) A charge for an offence under the Acts relating to the auxiliary forces or reserve forces, or any other Act other than the Army Act must, in accordance with the Rules of Procedure 11 and 134 (c), follow as nearly as possible the words of the Act; and where the enactment is in the alternative, each charge must, as in the following forms state only one of the alternatives.

FORMS OF CHARGES.

Part I.

Commencement of Charge-Sheet.

The accused [*number, rank, name, battalion, regiment*] a soldier [officer] of the regular forces,

or,

The accused [*rank, name*] an officer of the regular forces on the active list on half-pay,

or,

The accused [*rank, name*] retired pay [*or* pensioner, *or* reservist] employed on military service under the orders of an officer of the regular forces,

or,

The accused [*rank, name, regiment*] an officer of the militia [*or*

* See K.R., paras. 561 and 563.

an officer of the yeomanry commissioned since the 16th day of August, 1901],

or,

The accused [*rank, name*] an officer of the volunteer battalion of the regiment [*or* an officer of the yeomanry commissioned before the 17th day of August, 1901], whose corps is on actual military service [*or who is otherwise subject to military law*],

or,

The accused [*rank, name, corps*] an officer [a soldier] of a colonial force raised by order of His Majesty, and serving under the orders of an officer of the regular forces,

or,

The accused [*name*] being a person subject to military law as an officer [under the provisions of s. 175 (7) [*or* (8)] of the Army Act],

or,

The accused [*number, rank, name*] a militiaman [*or* yeoman] of the battalion regiment, out for training [*or* embodied] [*or otherwise subject to military law*],

or,

The accused [*number, rank, name, corps*] of the volunteer force of the United Kingdom, attached to the regular forces [*or otherwise subject to military law*],

or,

The accused [*name*] a follower [sutler] of His Majesty's forces being subject to military law as a soldier [under the provisions of s. 176 (9) [*or* (10)] of the Army Act],

is charged with—

Where the offence has been committed by a person while subject to military law, and he has ceased to be so subject at the time when he is charged (in accordance with the provisions of s. 158 *of the Army Act); as, for example, if a soldier has been transferred to the reserve, or discharged, or if the training period of a militiaman or yeoman has expired, the commencement of the charge will run as follows:—*

The accused [*name*] is charged with having, while being [*number, rank*] of the battalion regiment [a soldier of the regular forces] [*or otherwise subject to military law*], committed the following offence [offences], namely,

or,

The accused [*name*] is charged with having, while being [*number, rank*] of the battalion, regiment, a militiaman [*or* yeoman] out for training [*or otherwise subject to military law*] committed the following offence [offences], namely,

Part II.

Statement of Offence.

Offences in Respect of Military Service.

Section 4.

(1*a*.) Shamefully { abandoning / delivering up } { a garrison. / a place. / a post. / a guard. }

(1*b*.) Using means to { compel / induce } { a governor / a commanding officer / [*or other person*] } shamefully to { abandon / deliver up } { a garrison, / a place, / a post, / a guard, } which it was his duty to defend.

(2.) Shamefully casting away his { arms / ammunition / tools } in the presence of the enemy.

(3*a*.) Treacherously { holding correspondence with / giving intelligence to } the enemy.

(3*b*.) Treacherously / Through cowardice } sending a flag of truce to the enemy.

(4*a*.) Assisting the enemy with { arms. / ammunition. / supplies. }

(4*b*.) Knowingly { harbouring / protecting } an enemy not being a prisoner.

(5.) When a prisoner of war, voluntarily { serving with / aiding } the enemy.

(6.) Knowingly doing, when on active service, an act calculated to imperil the success of { His Majesty's forces. / part of His Majesty's forces. }

(7.) Misbehaving / Inducing others to misbehave } before the enemy in such manner as to show cowardice.

Section 5.

(1.) When on active service, without orders from his superior officer, leaving the ranks { in order to secure prisoners. / in order to secure horses. / on pretence of taking wounded men to the rear. }

(2.) When on active service wilfully { destroying / damaging } { property / } without orders from his superior officer.

(3*a*.) When on active service, being taken prisoner { by want of due precaution. / through disobedience of orders. / through wilful neglect of duty. }

(3*b*.) After being taken prisoner when on active service, failing to rejoin His Majesty's service when able to rejoin the same.

(4.) When on active service, without due authority { holding correspondence with / giving intelligence to / sending a flag of truce to } the enemy.

(5.) When on active service { by word of mouth / in writing / by signals / [*otherwise*] } { spreading reports / calculated to create unnecessary } { alarm. / despondency. }

(6.) When on active service { in action / previously to going into action } { using words / calculated to create } { alarm. / despondency. }

Section 6.

(1A). When on active service, leaving his commanding officer to go in search of plunder.

(1B.) [When on active service,] leaving his { guard / picquet / patrol / post } without orders from his superior officer.

(1C.) [When on active service,] forcing a safeguard.

(1D.) [When on active service,] { forcing / striking } a soldier when acting as sentinel.

(1E*a*.) [When on active service,] impeding { the provost-marshal / an assistant provost-marshal / an officer / a non-commissioned officer / [*other person*] } legally exercising authority { under / on behalf of } { the provost-marshal.

1E*b*.) [When on active service and] when called on, refusing to assist in the execution of his duty { the provost-marshal / an assistant provost-marshal / an officer / a non-commissioned officer / [*other person*] } legally exercising authority { under / on behalf of } { the provost-marshal.

(1F*a*.) [When on active service,] doing violence to a person bringing { provisions / supplies } to the forces.

(1F*b*.) [When on active service,] committing an offence against the { property / person } { of an inhabitant of / of a resident in } { the country in which / he was serving.

(1G.) [When on active service,] breaking into a { house / [*other place*] } in search of plunder.

(1H.) [When on active service,] by { discharging firearms / drawing swords / beating drums / making signals / using words / [*any means whatever*] } intentionally / occasioning false alarms { in action. / on the march. / in the field. / [*elsewhere.*]

(1I*a*.) [When on active service,] treacherously making known the { parole / watchword / countersign } to a person not entitled to receive it.

(1I*b*.) [When on active service,] treacherously giving a { parole / watchword / countersign } different from what he received.

(1J.) [When on active service,] irregularly { detaining / appropriating / to his own } { corps / battalion / detachment } { contrary to orders issued in that respect } { provisions / supplies } { proceeding to the forces.

(1K.) When a soldier acting as sentinel [on active service,] { sleeping on his post. / being drunk on his post. / leaving his post before he was regularly relieved.

(2A.) By { discharging firearms / drawing swords / beating drums / making signals / using words / [*any means whatever*] } negligently occasioning false alarms { in action. / on the march. / in the field. / [*elsewhere.*]

(2B*a*.) Making known the { parole / watchword / countersign } to a person not entitled to receive it.

(2B*b*.) Without good and sufficient cause giving a { parole / watchword / countersign } different from what he received.

Mutiny and Insubordination.

Section 7.

(1.) { Causing / Conspiring with other persons to cause } { a mutiny / sedition } { in forces belonging to His Majesty's } { regular forces. / reserve forces. / auxiliary forces. / navy.

(2*a*.) Endeavouring to seduce a person in His Majesty's { regular forces / reserve forces / auxiliary forces / navy } from allegiance to His Majesty.

(2*b*.) Endeavouring to persuade a person in His Majesty's { regular forces / reserve forces / auxiliary forces / navy } to join in { a mutiny / sedition.

(3*a*.) Joining in { a mutiny / sedition } in forces belonging to His Majesty's { regular forces. / reserve forces. / auxiliary forces. / navy.

(3*b*.) Being present at and not using his utmost endeavours to suppress { a mutiny / sedition } in forces belonging to His Majesty's { regular forces. / reserve forces. / auxiliary forces. / navy.

(4.) After coming to the knowledge of { an actual mutiny / an intended mutiny / actual sedition / intended sedition } in forces belonging to His Majesty's { regular forces / reserve forces / auxiliary forces / navy } { failing to inform without delay his commanding officer of the same.

Section 8.

(1.) { Striking / Using violence to / Offering violence to } his superior officer, being in the execution of his office.

(2*a*.) [When on active service,] { striking / using violence to / offering violence to } his superior officer.

(2*b*.) [When on active service,] using { threatening / insubordinate } language to his superior officer.

Section 9.

(1.) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.

(2.) [When on active service,] disobeying a lawful command given by his superior officer.

Section 10.

1.) When concerned in a fray { refusing to obey / striking / using violence to / offering violence to } an officer who ordered him into arrest.

(2.) { Striking / Using violence to / Offering violence to } a person in whose custody he was placed.

(3.) Resisting an escort whose duty it was { to apprehend him. / to have him in charge.

(4.) Breaking out of { barracks. / camp. / quarters.

Section 11.

(1.) Neglecting to obey { general / garrison / [*other*] } orders.

Desertion, Fraudulent Enlistment, and Absence without Leave.

Section 12.

(1.) { [When on active service] / [When under orders for active service] } { deserting His Majesty's service. / attempting to desert His Majesty's service.

(2.) { [When on active service] / [When under orders for active service] } { persuading / endeavouring to persuade / procuring / attempting to procure } a person subject to military law to desert from His Majesty's service.

Section 13.

(1.) and (2.) Fraudulent enlistment.

Section 14.

(1.) Assisting a person subject to military law to desert His Majesty's service.

(2.) When cognisant of { the desertion / the intended desertion } { of a person subject to military law not forthwith } { giving notice to his commanding officer. / taking some steps in his power to cause the { deserter / intending deserter } to be apprehended.

Section 15.

(1*a*.) Absenting himself without leave.
(2*a*.) Failing to appear at the place of {parade / rendezvous} appointed by his commanding officer.
(2*b*.) Without leave, before he was relieved, going from the place of {parade / rendezvous} appointed by his commanding officer.
(2*c*.) Without urgent necessity, quitting the ranks.
(3.) {When in camp / When in garrison / When [*elsewhere*]} being found {beyond the limits fixed by / in a place prohibited by} {General / garrison / [*other*]} {orders, without a pass or written leave from his commanding officer.}
(4.) Without leave from his commanding officer or due cause absenting himself from school when duly ordered to attend there.

Disgraceful Conduct.

Section 16.

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

Section 17.

(*a*.) {When charged with / When concerned in} the care / the distribution of public / of regimental money / goods {stealing / fraudulently misapplying / embezzling} the same.
(*b*.) {When charged with / When concerned in} the care / the distribution of public / of regimental money / goods {being concerned in the conniving at the} {stealing / fraudulent misapplication / embezzlement} thereof.
(*c*.) {When charged with / When concerned in} the care / the distribution {of public / of regimental} goods wilfully damaging the same.

Section 18.

(1*a*.) Malingering.
(1*b*.) {Feigning / Producing} disease. infirmity.
(2*a*.) Wilfully {maiming / injuring} {himself / another soldier} {with intent thereby to render} {himself / such other soldier} unfit for service.
(2*b*.) Causing himself to be {maimed / injured} by some person, with intent thereby to render himself unfit for service.
(3.) {Being wilfully guilty of misconduct by means of which misconduct / Wilfully disobeying orders by means of which disobedience} he {produced / aggravated / delayed the cure of} disease. infirmity.
(4*a*.) {Stealing / Embezzling} {money / goods} {the property of {a comrade. / an officer.} / belonging to a regimental {mess. / band. / institution.} / public money. / public goods.}
(4*b*.) Receiving, knowing them to be {stolen / embezzled} {money / goods} {the property of {a comrade. / an officer.} / belonging to a regimental {mess. / band. / institution.} / public money. / public goods.}
(5*a*.) Such an offence of a fraudulent nature as is mentioned in sub-section five of section eighteen of the Army Act.
(5*b*.) Disgraceful conduct of {a cruel / an indecent / an unnatural} kind.

Drunkenness.

Section 19.

(1*a*.) Drunkenness on duty.
(1*b*.) Drunkenness.

Offences in Relation to Persons in Custody.

Section 20.

(1.) When in command of a { guard / picquet / patrol / post } [wilfully] releasing without proper authority a person committed to his charge.

(2.) { Wilfully / Without reasonable excuse } allowing to escape a person committed to his charge whom it was his duty to { keep. / guard.

Section 21.

(1*a*.) Unnecessarily detaining a person in { arrest / confinement } without bringing him to trial.

(1*b*.) Unnecessarily failing to bring a person's case before the proper authority for investigation.

(2.) After having committed a person to the custody of { an officer / a non-commissioned officer / a provost-marshal / an assistant provost-marshal } failing without reasonable cause to deliver { at the time of the committal or as soon as practicable / within 24 hours after such committal } { to the officer / to the non-commissioned officer / to the provost-marshal / to the assistant-provost-marshal } { into whose custody the person was committed, / an account in writing signed by himself of the offence with which the person so committed is charged.

(3.) When in command of a guard failing { as soon as he was relieved from { guard / duty } / within twenty-four hours after a person was committed to his charge } to give in writing to the officer to whom he was ordered to report { that person's name. / that person's offence so far as known to him. / { the name / the rank } of the officer of the [*person*] { by whom the person was charged. / the written account given him by the officer [*person*] { by whom the person was committed to his custody.

Section 22.

(1.) When in { arrest / confinement / prison / [*other lawful custody*] } { escaping. / attempting to escape.

Offences in Relation to Property.

Section 23.

(1.) Conniving at the exaction of an exorbitant price for { house / stall } let to a sutler.

(2.) { Laying a duty upon / Taking a fee in respect of / Taking an advantage in respect of / Being interested in } { the sale of provisions / the sale of merchandise } brought into { a garrison / a camp / a station / a barrack / a [*place*] } in which { commanded. / authority. } he has

{ the sale of / the purchase of } { provisions / stores } for the use of some of His Majesty's forces.

Section 24.

(1.) { Making away with by / Being concerned in making away with by } { pawning / selling / destruction / [*otherwise*] } { his arms. / his ammunition. / his equipments. / his instruments. / his clothing. / his regimental necessaries. / a horse of which he had charge.

(2.) Losing by neglect { his arms. / his ammunition. / his equipments. / his instruments. / his clothing. / his regimental necessaries. / a horse of which he had charge.

(3.) Making away with by { pawning / selling / destruction / [*otherwise*] } a military decoration granted him.

(4.) Wilfully injuring { his arms. / his ammunition. / his equipments. / his instruments. / his clothing. / his regimental necessaries. / a horse of which he had charge. / a military decoration granted him. / property belonging to { a comrade. / an officer. / a regimental mess. / a regimental band. / a regimental institution. } / public property. }

(5.) Ill-treating a horse used in the public service.

Offences in Relation to False Documents and Statements.

Section 25.

(1.) In a { report / return / muster roll / pay list / certificate / book / route / [*other document*] } { made by him / signed by him / of the contents of which it was his duty to ascertain the accuracy } knowingly making being privy to the making of { a false statement. / a fraudulent statement. / an omission with intent to defraud. }

(2.) { Knowingly, and with intent to { injure some { person / defraud } / suppressing / making away with / defacing / altering } a { document which it was his duty to } { preserve. / produce. } }

(3.) Where it was his official duty to make a declaration respecting any matter knowingly making a false declaration.

Section 26.

(1.) When signing a document relating to { pay / arms / ammunition / equipments / clothing / regimental necessaries / provisions / furnitnre / bedding / blankets / sheets / utensils / forage / stores } leaving in blank a material part for which his signature was a voucher.

(2.) { Refusing to / By culpable neglect / omitting to } { make / send } { a report / a return } which it was his duty to { make. / send. }

Section 27.

(1.) Making a false accusation against { an officer / a soldier } knowing such accusation to be { false. }

(2.) In making a complaint where he thought himself wronged { knowingly making a false statement affecting the character of { an officer. / a soldier. } / knowingly and wilfully suppressing { material facts. / a material fact. } }

(3.) Falsely stating to his commanding officer that he had { been guilty of { desertion. / fraudulent enlistment. / desertion from the navy. } / served in and been discharged from { a portion of the regular forces. / a portion of the reserve forces. / a portion of the auxiliary forces. / the navy. } }

(4.) Making a wilfully false statement to a { military officer / justice } in respect of the prolongation of furlough.

Offences in Relation to Courts-Martial.

Section 28.

(1.) When duly { summoned / ordered to attend } as a witness before a court-martial, making default in attending.

(2.) Refusing to { take an oath legally required by a court-martial to be taken. / make a solemn declaration legally required by a court-martial to be made.

(3.) Refusing to produce { power / control } legally required by a court-martial to be produced a document in his { / } by him.

(4.) Refusing when a witness, to answer a question to which a court-martial might legally require an answer.

(5.) Being guilty of contempt of a court-martial by { using { insulting / threatening } language. / causing { an interruption / a disturbance } in the proceedings of such court.

Section 29.

(1.) Wilfully giving { oath / solemn declaration } before { a court-martial. / a court / an officer } { authorised by the Army Act to administer an oath.

Offences in Relation to Billeting.

Section 30.

(1.) Being guilty of ill-treatment by { violence / extortion / making disturbances in billets } of the occupier of a house in which a { person / horse } was billeted.

(2.) { Refusing / Neglecting } { on complaint and proof of the ill-treatment by { violence by extortion by making disturbances in billets by } } { an officer / a soldier } { under his command, of the occupier of a house in which a { person / horse } was billeted to cause compensation to be made for the same.

(3.) Failing to comply with the provisions of the Army Act with respect to the { payment of the just demands of a person on whom / making up and transmitting of an account of the money due to a person on whom } { he / his horse / the horse of { an officer / a soldier } under his command / the horse of { an officer / a soldier } under his command } had been billeted.

(4.) Wilfully demanding billets which were not actually required for some { person / horse } entitled to be billeted.

(5.) { Taking / Knowingly suffering to be taken } { from a { money / a reward } for { excusing / relieving } a person from { his liability / a part of his liability } in respect of the { billeting / quartering } of { officers. / soldiers. / horses.

(6a.) { Offering / Using } { menace to / compulsion on } { a constable / a civil officer } to make him give billets contrary to the Army Act.

(6b.) { Using / Offering } { menace to / compulsion on } { a constable / a civil officer } { tending to { deter / discourage } { him from performing part of / } / tending to induce him to do something contrary to } his duty under the provisions of the Army Act relating to billeting.

(7.) { Using / Offering } { menace to / compulsion on } { a person tending to oblige him } { to receive without his consent, a { person / horse } not duly billeted upon him in pursuance of / to furnish some accommodation which he is not required to furnish by } the provisions of the Army Act relating to billeting.

Offences in Relation to Impressment of Carriages.

Section 31.

(1.) Wilfully demanding { carriages / animals / vessels } which were not actually required for purposes authorised by the Army Act.

(2.) Failing to comply with the provisions of the Army Act, relating to the impressment of carriages, as regards { the payment of sums due for carriages. / the weighing of the load.

(3.) Constraining { a carriage / an animal / a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages } { to travel against the will of the person in charge thereof, beyond the proper distance. / to carry against the will of the person in charge thereof, a greater weight than he was required by the said provisions to carry.

(4.) Failing to discharge as speedily as practicable { a carriage / an animal / a vessel } furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.

(5.) { Compelling / Permitting the compelling of } { a person in charge of } { a carriage / an animal / a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages to take thereon } { baggage / stores } not entitled to be carried. / though not furnished on a requisition of emergency a { soldier / servant } who was { woman / person } not sick.

(6.) { Ill-treating / Permitting the ill-treatment of } a person in charge of { a carriage / an animal / a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.

(7.) { Using / Offering } { menace / to / compulsion on } a constable { to make him provide { a carriage / an animal / a vessel } which he was not bound in pursuance of the provisions of the Army Act relating to the impressment of carriages, to provide. / tending to { deter / discourage } { him from performing a part of } { his duty in relation to the providing of } { carriages. / animals. / vessels. / tendering to induce him to do something contrary to

(8.) Forcing { a carriage / an animal / a vessel } from the owner thereof.

Offences in Relation to Enlistment.

Section 32.

(1.) After having been { discharged with disgrace from a part of His Majesty's forces / dismissed with disgrace from the navy } { enlisting in the regular forces without declaring the circumstances of his } { discharge. / dismissal.

Section 33.

(1, 2.) Making a wilfully false answer to a question set forth in the attestation paper which was put to him by, or by direction of, the justice before whom he appeared for the purpose of being attested.

Section 34.

(1.) Being concerned in the enlistment for service in the regular forces of a man when he { knew / had reasonable cause to believe } such man to be so circumstanced that by enlisting he committed an offence against the Army Act.

(2.) Wilfully contravening { the enactments of the Army Act / [*other enactments*] / the regulations of the service } in a matter relating to the { enlistment / attestation } { of soldiers of the regular forces.

Miscellaneous Military Offences.

Section 35.

(1.) Using { traitorous / disloyal } words regarding the Sovereign.

Section 36.

(1.) Without due authority { verbally / in writing / by signal / [*otherwise*] } disclosing { the numbers of / the position of } { some forces / some magazines of the forces / some stores of the forces } / { some preparations for / some orders relating to } { operations / movements } of some forces } at such time and in such manner as to have produced effects injurious to His Majesty's service.

Section 37.

(1.) { Striking / Ill-treating } a soldier.

(2.) After receiving the pay of { an officer / a soldier } { unlawfully detaining / unlawfully refusing to pay } the same when due.

Section 38.

(1.) { Fighting / Promoting / Being concerned in / Conniving at fighting } a duel.

(2.) Attempting to commit suicide.

Section 39.

(1.) On application being made to him { neglecting / refusing } { to deliver over to the civil magistrate / to assist in the lawful apprehension of } { an officer / a soldier } { accused of an offence punishable by a civil court.

Section 40.

(1.) { An act / Conduct / Disorder / Neglect } to the prejudice of good order and military discipline.

Section 41.

(1-4.) { When on active service / In Gibraltar / In some place not in the United Kingdom or Gibraltar and more than one hundred miles as measured in a straight line from any city or town in which he can be tried by a competent civil court for the offence } committing the offence of { treason. / murder. / manslaughter. / treason-felony. / rape.

(5.) Committing a civil offence, that is to say [*state the offence according to English law, either using legal terms, e.g.*, arson, larceny, larceny from the person, assault, robbery, with violence, &c., *or, in ordinary language, e.g.*, stealing, wilfully injuring property, setting fire to a house, &c.]

Section 155.

(1-3.) { Negotiating / Acting as agent for / Aiding / Conniving at } { the { sale / purchase } of a commission in His Majesty's regular forces. / the { giving / receiving } { of any valuable consideration in respect of any { promotion in / retirement from / employment in } } His Majesty's regular forces. / any exchange made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which a } { sum of money / [*consideration*] } has been { given. / received.

ILLUSTRATION OF CHARGE.

App. I.

Note.—The following is an illustration of a complete charge-sheet, with statement of offences and particulars, as it would be placed before a district court-martial.

Charge-Sheet.

The accused, No. 153, Private John Smith, 2nd Battalion shire Regiment, a soldier of the regular forces, is charged with—

Using threatening language to his superior officer— First charge. Sec. 8 (2).

in that he

at Topsham Barracks, Exeter, on the 20th January, 1907, said to Serjeant William Robinson, the shire Regiment, "I will punch your head," or words to that effect.

Resisting an escort whose duty it was to have him in charge— Second charge. Sec. 10 (3).

in that he

at Exeter, on the 20th January, 1907, resisted the escort taking him to the guard detention room, and kicked Private John Jones, one of the said escort, and damaged the trousers of Private James Brown, another of the said escort, to the value of five shillings.

A. B.,
Commanding Depôt shire Regiment.

Exeter,
22*nd January*, 1907.

To be tried by a district court-martial.

X. Y.,
Commanding Western Counties
Grouped Regimental District (*or* Staff Officer, who should sign *for* Commanding G.R.D.).

Exeter,
24*th January*, 1907.

The following further Illustrations of Charges will be found useful. They are not part of the Appendix to the Rules of Procedure.

FURTHER ILLUSTRATIONS OF CHARGES.

Note.—The words in brackets in the following illustrations of charges do not necessarily form part of the charge, but are sometimes alternatives, and sometimes are inserted as aggravating or explaining the offence, or for the purpose of the award by the court of stoppages from pay.

Where the words in brackets are "when on active service" they alter the gravity of the charge, and are very material, but are inserted in brackets because the charge will be a good charge without them, although if they are omitted the charge will be for a less grave offence.

The words "soldier of the regular forces" in the description of the accused are not essential where he is described as belonging to a regiment or battalion in the regular forces.

A second charge may be added to the charge-sheet as an alternative to the first charge in those cases (some of which are mentioned in the notes) where it is doubtful whether the offence committed by the person amounted to one charge or to the other.

No. 1.
Charge-Sheet.

Sec. 4 (2).

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Shamefully casting away his arms in the presence of the enemy,

in that he, at , on , when on outlying picquet, and attacked by the enemy, shamefully cast away his rifle, left his picquet, and ran away.

No. 2.

CHARGE-SHEET.

Sec. 4 (7). The accused, No. Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Misbehaving before the enemy in such a manner as to show cowardice,

in that he, at , on , during an attack on , and when under the enemy's fire, fell out of the ranks, under pretence of being unable to march further.

No. 3.

CHARGE-SHEET.

Sec. 5 (1). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When on active service, without orders from his superior officer, leaving the ranks on pretence of taking wounded men to the rear,

in that he, at on , when in the ranks, and during an attack upon , without orders from his superior officer, on pretence of taking to the rear Lieutenant who was wounded, left the ranks.

No. 4.

CHARGE-SHEET.

Sec. 5 (2). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When on active service, wilfully destroying property without orders from his superior officer,

in that he, on , in , and encamped near the village of , without orders from his superior officer, wilfully set fire to a dwelling-house, situate in the said village.

No. 5.

CHARGE-SHEET.

Sec. 6 (1*a*). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When on active service leaving his commanding officer to go in search of plunder,

in that he, on , when belonging to a force in military occupation of , and when marching with his battalion under Lieutenant-Colonel , through the town of , left his commanding officer, and went in search of plunder.

No. 6.

CHARGE-SHEET.

Sec. 6 (1*c*). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[*When on active service*] *forcing a safeguard,*

in that he, at , on , in , wilfully, and after being duly warned, entered a dwelling-house in street, at , in which, by orders of the General commanding, Serjeant had been placed as a safeguard, for the protection of the occupants and the property therein, and took therefrom five bottles of wine, value , or thereabout.

No. 7.

CHARGE-SHEET.

Sec. 6 (1*d*). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[*When on active service*] *forcing a soldier when acting as sentinel,*

in that he, at , on , after being warned by the sentry on No. Post, Guard, not to pass, passed the said sentry.

No. 8.

CHARGE-SHEET.

Sec. 6 (1*f*). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[*When on active service*] *doing violence to a person bringing provisions to the forces,*

in that he at , on , assaulted one , a sutler, who was

bringing into camp bread and vegetables for the use of the troops [and forcibly took from him a portion of the same, value].

No. 9.

CHARGE-SHEET.

The accused, A.B., sutler, being subject to military law as a soldier by reason of accompanying His Majesty's troops on active service in [Egypt], is charged with— Sec. 6 (1*f*)

When on active service committing an offence against the person of a resident in the country in which he was serving,
in that he, at , on , committed a rape on of .

No. 10.

CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with — Sec. 6 (1*f*).

When on active service committing an offence against the person of an inhabitant of the country in which he was serving, in that he, at , on in Egypt, assaulted , of .

No. 11.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 6 (1*g*).

[*When on active service*] *breaking into a house in search of plunder*
in that he, at , in [Egypt] , on broke open the front door of a dwelling-house No. , in street, and entered it in search of plunder.

No. 12.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 6 (1*h*)

[*When on active service*] *by discharging fire-arms, intentionally occasioning false alarms on the march,*
in that he, on , when on the march with his Battalion between and , by intentionally discharging his rifle, occasioned a false alarm.

Note.—If there is a doubt as to whether the discharge of the rifle was intentional, a charge similar to No. 14 can be added as an alternative in the same charge-sheet.

No. 13.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 6 (1*k*).

When a soldier acting as sentinel [*on active service*] *sleeping on his post,*
in that he, at , on , between 1 and 2 a.m. when sentry on No. Post Guard was asleep.

No. 14.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 6 (2*a*).

By discharging fire-arms, negligently occasioning false alarms in camp,
in that he, when encamped with , at , on , by negligently discharging his rifle at about midnight, occasioned a false alarm in the said camp.

No. 15.

CHARGE-SHEET.

The accused, No. , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Causing a mutiny in forces belonging to His Majesty's Regular Forces,
in that he, at , on , in his Barrack Room addressed Serjeant , Private , and other soldiers, Regiment, there assembled, in mutinous language, by advising them not to First charge. Sec. 7 (1).

turn out at Commanding Officer's Parade at 10 o'clock next day in consequence of which language they, the said Serjeant , and Private , and other soldiers of the said Battalion, did not turn out for the said parade.

Second charge. Sec. 7 (2b). *Endeavouring to persuade persons in His Majesty's Regular Forces to join in a mutiny,*
in that he, at , on stated in the first charge, endeavoured to persuade Lance-Corporal , Battalion, Regiment, to join in a mutiny, and not to mount guard, for which duty he, the said Lance-Corporal, had been duly warned.

No. 16.

(Joint Trial.)

CHARGE-SHEET.

Sec. 7 (3a). The accused persons, No. , Private , Battalion, Regiment, and No. , Private , Battalion, Regiment, soldiers of the Regular Forces, are charged with—
Joining in a mutiny in forces belonging to His Majesty's Regular Forces,
in that they, at , on [or about] joined in a mutiny by combining among themselves [and with other soldiers of the] to resist and offer violence to their superior officers in the execution of their duty.

Note.—This charge is equally applicable to the case where a single person is charged.

No. 17.

CHARGE-SHEET.

Sec. 7 (4). The accused, Bombardier , Battery, Royal Field Artillery, a soldier of the Regular Forces, is charged with—
After coming to the knowledge of an intended mutiny in forces belonging to His Majesty's Regular Forces, failing to inform without delay his commanding officer of the same,
in that he, at , on , was present in the public-house known as the Red Lion, where Bombardier , Gunner , and other soldiers of Battery, Royal Field Artillery were assembled, and, in his hearing, agreed to cut up and destroy the harness belonging to the said Battery, and failed to inform his commanding officer thereof.

No. 18.

CHARGE-SHEET.

Sec. 8 (1). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces is charged with—
Striking his superior officer, being in the execution of his office,
in that he, at , on , struck with his fist in the face Corporal , Regiment, who was at the time in command of an escort taking soldiers in custody to the guard-room.

No. 19.

CHARGE-SHEET.

Sec. 8 (2a). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[*When on active service*] *offering violence to his superior officer*, in that he, at , on , when checked by Corporal , Regiment, attempted to strike the said corporal.

No. 20.

CHARGE-SHEET.

Sec. 8 (2b). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[*When on active service*] *using threatening language to his superior officer*, in that he, at , on , after having been awarded a punishment by his commanding officer, said to Serjeant , Regiment, "I'll be revenged on you for this, yet."

No. 21.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 9 (1).

Disobeying in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer, in the execution of his office.

in that he, at , on when personally ordered by Captain , Regiment, upon commanding officer's parade, to take up his rifle and fall in, did not do so, divesting himself at the same time of his waist belt, and saying, "I'll soldier no more, you may do what you please."

No. 22.

CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 9 (2).

[*When on active service*] *disobeying a lawful command given by his superior officer*,

in that he, at , on did not leave the canteen when ordered to do so by Corporal , Regiment.

No. 23.

CHARGE-SHEET.

The accused, Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with— Sec. 10 (1).

When concerned in a quarrel, refusing to obey an officer who ordered him into arrest,

in that he, on , in the ante-room of the officers' mess at , after having quarrelled with and struck Lieutenant Regiment, on being ordered into arrest by Lieutenant Regiment, refused to obey the order.

No. 24.

CHARGE-SHEET.

The accused, No. , Corporal , Dragoons, a soldier of the Regular Forces, is charged with— Sec. 10 (2).

Striking a person in whose custody he was placed,

in that he, at , on , when placed in the custody of Police Constable , struck with his waist-belt, on the head, the said Police Constable.

No. 25.

CHARGE-SHEET.

The accused, No. , Drummer , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 10 (4).

Breaking out of Barracks,

in that he at , on , broke out of barracks, when his duty required him to be in barracks.

No. 26.

CHARGE-SHEET.

The accused, No. , Serjeant Hussars, a soldier of the Regular Forces, is charged with— Sec. 11.

Neglecting to obey camp orders,

in that he, at , on bathed in the river , above camp, contrary to a camp order directing all persons to abstain from bathing in that part of the river.

No. 27.

CHARGE-SHEET.

The accused, William Robinson, being a person subject to military law as an officer by reason of his accompanying His Majesty's Forces on active service in Afghanistan, and holding a pass entitling him to be treated on the footing of an officer, is charged with— Sec. 11.

Neglecting to obey camp orders,

in that he, on , entered the village of , contrary to a camp order directing all persons to abstain from entering that village.

No. 28.

CHARGE-SHEET.

Sec. 12 (1*a*). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[*When on active service*] *deserting His Majesty's Service*,

in that he, at , on , absented himself from Regiment, until apprehended at , on , by the civil power, as a stowaway on board the steamer , which was about to leave the harbour for .

No. 29.

CHARGE-SHEET.

Sec. 12 (1*a*). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[*When on active service*] *attempting to desert His Majesty's Service*,

in that he, at , on , concealed himself in a back room of a house situate in , and when apprehended by the military police on the same day was partly dressed in plain clothes.

Note.—In the two preceding charges, if the soldier was under orders for active service, the charge will be the same, with the substitution of "under orders for active service" for "on active service."

No. 30.

CHARGE-SHEET.

Sec. 12 (1*a*). The accused, No. , Private , Battalion, Regiment, a soldier of the the Regular Forces, is charged with—

Deserting His Majesty's Service,

in that he, at , on , absented himself from Regiment, until apprehended by the civil power at , on [where he was in civil employment, and dressed in plain clothes].

No. 31.

CHARGE-SHEET.

Sec. 12 (1*a*). The accused, No. , Private , Dragoons, a soldier of the Regular Forces, is charged with—

[*When under orders for active service*]

Deserting His Majesty's Service,

in that he, at , on , when under orders for embarkation for active service, absented himself from the of until the of , with intent to avoid such embarkation.

No. 32.

CHARGE-SHEET.

Sec. 13 (1). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Fraudulent enlistment,

in that he, at , on , when belonging to the Regiment, without having fulfilled the conditions enabling him to enlist, enlisted into His Majesty's Regular Forces for general service [*or* for service in the regiment], thereby obtaining a free kit, value .

No. 33.

CHARGE-SHEET.

Sec. 14 (1). The accused, No. , Private , Dragoons, a soldier of the Regular Forces, is charged with—

Assisting a person subject to Military Law to desert His Majesty's Service,

in that he, at , on [or about] , well knowing that Private , Regiment, was about to desert, provided him with a suit of plain clothes.

No. 34.

CHARGE-SHEET.

The accused, No. , Private , Lancers, a soldier of the Regular Forces, is charged with—

Absenting himself without leave,

in that he, at absented himself from tattoo roll call on till 7.30 a.m. on

No. 35.

CHARGE-SHEET.

The accused, No. , Gunner , Battery, Royal Field Artillery, a soldier of the Regular Forces, is charged with— Sec. 15 (2).

Failing to appear at the place of rendezvous appointed by his commanding officer,

in that he, at on , when in billet in the town of , failed to appear at the market square in that town, the place of rendezvous duly appointed by , his commanding officer.

No. 36.

CHARGE-SHEET.

The accused, No. , Bugler , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 15 (3).

When in camp being found beyond the limits fixed by Regimental Orders without a pass or written leave from his commanding officer,

in that he, when encamped near Exeter, was found on , in Topsham, without a pass from his commanding officer.

No. 37.

CHARGE-SHEET.

The accused, Lieutenant , Regiment, an officer of the Regular Forces, is charged with— Sec. 16.

Behaving in a scandalous manner unbecoming the character of an officer and a gentleman,

in that he, at , on , in payment of his mess account, gave Mr. , the mess man, a cheque for 31*l.* on Messrs. Cox and Co., Army Agents, well knowing that he had not sufficient funds in the hands of the said Agents to meet the said cheque, and having no reasonable grounds for supposing that the aforesaid cheque would be honoured when presented.

No. 38.

CHARGE-SHEET.

The accused, Captain , Regiment, an officer of the Regular Forces, is charged with— Sec. 16.

Behaving in a scandalous manner unbecoming the character of an officer and a gentleman,

in that he, at , on , [*or* between and], wrote and sent to his commanding officer, Lieut.-Colonel , Regiment, an anonymous letter in which he made use of the following words:—

"By stopping leave and overworking your officers and men, you make the Regiment a hell upon earth. Your tyrannical conduct is a matter of general remark, and you may rely on it, unless you change, complaints will be made against you at the next General's Inspection."

No. 39.

CHARGE-SHEET.

The accused, Captain , Army Pay Department, an officer of the Regular Forces, is charged with— Sec. 17 *a*).

When charged with the care of public money, embezzling the same.

in that he, at on , [*or* between and], when charged with the care of public money, having received a cheque for twenty-five pounds to cash for public purposes, applied the cash to his own use.

Note.—The particulars should state the acts which are alleged to have been done by the accused and to amount to embezzlement.

No. 40.

CHARGE-SHEET.

The accused, Quartermaster , Royal Army Medical Corps, an officer of the Regular Forces, is charged with— Sec. 17 (*a*).

When charged with the care of public goods, fraudulently misapplying the same,

in that he, at ,on [or about] , when charged

with the care of ten rugs for hospital use, value
or thereabout, used the said rugs for his own bed [gave the same away to
Serjeant and Private , for their own use].

No. 41.

CHARGE-SHEET.

Sec. 17 (*a*). The accused, No. , Corporal , Army Ordnance Corps, a soldier of the Regular Forces, is charged with—

When concerned in the care of public goods, stealing the same,

in that he, at , on [or about] when employed in the care of Ordnance Stores, stole three revolver pistols value twenty-eight shillings each, part of the said stores.

No. 42.

CHARGE-SHEET.

Sec. 17 (*a*). The accused, No. , Staff Serjeant
Army Service Corps, a soldier of the Regular Forces, is charged with—

When concerned in the distribution of public goods, fraudulently misapplying the same,

in that he, at , on , when concerned in the distribution of coals to Battalion, Regiment, with intent to defraud, issued four sacks thereof, weighing two cwt. each or thereabout, of a total value of , or thereabout, to , a person not entitled to receive them.

No 43.

CHARGE-SHEET.

Sec. 18 (1*a*). The accused, No. , Private , Battalion, Regiment a soldier of the Regular Forces, is charged with—

Malingering.

in that he, at , on , [between and], with the intention of evading his duties as a soldier counterfeited dumbness.

No. 44.

CHARGE-SHEET.

Sec. 18 (1*b*). The accused, No. , Private , Hussars, a soldier of the Regular Forces, is charged with—

Feigning disease,

in that he, at , on , pretended to Surgeon that he was suffering violent pains in the head and down his back, whereas he was not so suffering.

No. 45.

CHARGE-SHEET.

Sec. 18 (2*a*). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Wilfully maiming himself with intent thereby to render himself unfit for service,

in that he, at , on , when sentry on No. Post Guard, by discharging his rifle wilfully, blew off the fore and middle finger of his right hand.

No. 46.

CHARGE-SHEET.

Sec. 18 (3). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Being wilfully guilty of misconduct by means of which misconduct he delayed the cure of disease,

in that he, at , on , [between and], when under medical treatment for syphilitic sores, tampered with the said sores by the secret application of bluestone.

No. 47.

CHARGE-SHEET.

Sec. 18 (3). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Wilfully disobeying orders by means of which disobedience he delayed the cure of his disease [or infirmity],

in that he, at , on , when under medical treatment for an abscess in the leg, refused to submit to the treatment, viz., a surgical operation, deemed advisable to effect his cure, and as such ordered by , Royal Army Medical Corps, in medical charge of the accused.

No. 48.

CHARGE-SHEET.

The accused, No. , Private (Lance-Corporal) Hussars, a soldier of the Regular Forces, is charged with— Sec. 18 (4*a*).

Stealing public money,

in that he, at , on , when entrusted by Staff-Serjeant-Major with the sum of five shillings public money, for the purpose of paying for the transmission of five official telegrams, applied the same for his own use.

No. 49.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Stealing goods, the property of a comrade, First charge.

in that he, in the Cambridge Barracks at Portsmouth, on , stole a watch, the property of Charles Williams, a private in the same regiment: Sec. 18 (4*a*).

Receiving, knowing them to be stolen, goods, the property of a comrade, Second charge.

in that he, at Portsmouth, at the place and on the day aforesaid was in possession of a watch stolen from the said Charles Williams, which he knew to have been stolen. Sec. 18 (4*b*).

No. 50.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 18 (5*a*).

Such an offence of a fraudulent nature as is mentioned in sub-section 5 of Section 18 of the Army Act,

in that he, at , on [or about] , when employed as an assistant in the regimental canteen, with intent to defraud, added water to a cask of ale belonging to the stores of the said canteen.

No. 51.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 19.

[*When on active service*] *Drunkenness on duty,*

in that he, at , on , when on duty [on parade] was drunk.

Note.—A soldier drunk when on the line of march may be tried for being drunk on duty. See chapter iii, para. 28.

In order to enable a court-martial to award field punishment, it is essential to allege "when on active service."

If a soldier was on special duty, *e.g.*, parade or picquet, that special duty should be stated.

No. 52.

CHARGE-SHEET.

The accused, No. , Drummer , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 19.

[*When on active service*] *Drunkenness*

in that he, at , on , was drunk [having been previously warned for duty].

Note.—If the offender has been warned for special duty, *e.g.*, night picquet, or in aid of the civil power, the nature of that special duty should be stated.

In order to enable a court-martial to award field punishment, it is essential to allege "when on active service."

No. 53.

CHARGE-SHEET.

The accused, No. , Serjeant , Battalion Regiment, a soldier of the Regular Forces, is charged with— Sec. 20 (1)

When in command of a picquet wilfully releasing, without proper authority, a person committed to his charge,
in that he, at , on , when in command of a picquet patrolling the town, released Private , Regiment, a person who had been committed to his charge by provost-serjeant .

No. 54.

CHARGE-SHEET.

Sec. 20 (1).

The accused, No. , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
When in command of a guard releasing, without proper authority, a person committed to his charge,
in that he, at , on , when in command of the barrack guard, without authority released Corporal , Battalion, Regiment, a person committed to his charge.

No. 55.

CHARGE-SHEET.

Sec. 20 (2).

The accused, No. , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Wilfully allowing to escape a person committed to his charge,
in that he, at Liverpool, on , when in command of an escort conducting to Dublin Private , Battalion, Regiment, a person committed to his charge, without valid cause left the person and escort, when the said person escaped.

Note.—Upon this charge a court-martial is competent to find the accused guilty of "without reasonable excuse, allowing to escape the person committed to his charge." Sec. 56 (5) Army Act.

No. 56.

CHARGE-SHEET.

Sec. 20 (2).

The accused, No. , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Without reasonable excuse allowing to escape a person committed to his charge,
in that he, at , on , when conducting to his Battalion, Private , Battalion, Regiment, a person committed to his charge [allowed a crowd to assemble round the said person without taking reasonable means to prevent it, and thus] permitted the escape of the said person.

No. 57.

CHARGE-SHEET.

Sec. 22.

The accused, No. , Private , Dragoon Guards, a soldier of the Regular Forces, is charged with—
When a person in confinement escaping,
in that he, at , on , when in confinement at escaped.

No. 58.

CHARGE-SHEET.

Sec. 22.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
When a person in lawful custody attempting to escape,
in that he, at , on when proceeding under escort to , broke away from his escort and attempted to escape.

No. 59.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

First charge. Sec. 24 (1).

Making away with by pawning his clothing and regimental necessaries,
in that he, at , on [or about] , pawned to , for the sum of five shillings, one pair of ankle boots and two brushes, and one flannel shirt:

Second charge. Sec. 24 (2).

Losing by neglect his clothing and regimental necessaries,
in that he, at the place and on [or about] the day aforesaid, was deficient

of the articles of his clothing and regimental necessaries specified in the first charge.

Note.—If the accused sold his clothing, &c., this same charge can be used with the substitution of "selling" for "pawning."

The second charge should only be added where there is any doubt about the proof of the pawning or selling being sufficient.

No. 60.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 24 (2).

Losing by neglect his equipments, clothing, and regimental necessaries,

in that he, at , on [or about] was deficient of one waist-belt, value , one serge frock value , and two pairs of socks.

No. 61.

CHARGE-SHEET.

The accused, No. , Colour-Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 25 (1).

In a document signed by him knowingly making a fraudulent statement,

in that he, at , on [or about] , [between and], in his capacity as pay-serjeant of company, Regiment, fraudulently entered in his cash account for the month of , 19 , the following item—Washing bills, three pounds four shillings and two pence, whereas the actual amount paid by him in respect of such bills was two pounds fifteen shillings and four pence.

No. 62.

CHARGE-SHEET.

The accused, No. , Colour-Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 25 (2).

Knowingly and with intent to defraud, altering a document which it was his duty to preserve,

in that he, at , on [or about] [between and], in the Military Savings Bank Form No. 2, statement of deposits and withdrawals for the month of , 19 , altered, with intent to defraud, the figure £2 sterling, representing a withdrawal made by Private , Regiment, and changed it into £3 sterling.

Note.—The name of the person whom the accused intended to defraud should be stated where possible.

No. 63.

CHARGE-SHEET.

The accused, No. , Colour-Serjeant , Battalion, Regiment a soldier of the Regular Forces, is charged with— Sec. 25 (2).

Knowingly and with intent to defraud making away with a document which it was his duty to preserve,

in that he, at , on [or about] , with intent to defraud, burned the pay sheet of A Company, Regiment, for the month of , 19 .

No. 64.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 27 (1).

Making a false accusation against a soldier knowing such accusation to be false,

in that he, at , on , when appearing before Captain , Regiment, to answer for a minor offence, used language to the effect following, that is to say: "The colour-serjeant is not fair in taking men for duty, and no one in the company can get on if he does not give him a bribe," meaning thereby the colour-serjeant of his company, Regiment, well knowing the said statement to be false.

No. 65.

CHARGE-SHEET.

The accused, No. , Private Dragoons, a soldier of the Regular Forces, is charged with— Sec. 27 (3).

Falsely stating to his commanding officer that he had been guilty of desertion, in that he, at , on , stated to , his commanding officer, that he was a deserter from , well knowing such statement to be false.

No. 66.

CHARGE-SHEET.

Sec. 29. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Wilfully giving false evidence when examined on oath before a court-martial, in that he, at , on , when examined as a witness before a court-martial, stated on oath, that Private , Regiment, the person charged before the said court, was in his, the witness's, company in his barrack-room, at , between 4 and 5 p.m. on , well knowing such statement to be false.

No. 67.

CHARGE-SHEET.

Sec. 30 (3). The accused, No. , Squadron Serjeant-Major Regiment, a soldier of the Regular Forces, is charged with—

Failing to comply with the provisions of the Army Act, with respect to the payment of the just demands of a person on whom soldiers under his command and their horses had been billeted, in that he, at , on , having himself with his horse, and three soldiers Regiment, with their horses, been billeted on Mr. , a keeper of a victualling house, failed to pay the said Mr. , the sum of due to him for the said billets.

No. 68.

CHARGE-SHEET.

Sec. 32. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

After having been discharged with disgrace from a part [parts] of His Majesty's Forces, enlisting in the Regular Forces without declaring the circumstances of his discharge [discharges], in that he, at , on , after having been discharged with ignominy from , [as incorrigible and worthless from , and on conviction of felony from], enlisted in His Majesty's Regular Forces for general service [*or*, for service in the Regiment], without declaring the circumstances of his discharge [discharges].

No. 69.

CHARGE-SHEET.

Sec. 33. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested, in that he, at , on , when he appeared before A.B., a Justice of the Peace, for the purpose of being attested for general service [*or* for service in the Regiment]—to the question put to him, Have you ever served in the Army? answered, "No"; whereas, he had served, as he well knew, in the Regiment.

No. 70.

CHARGE-SHEET.

Sec. 33. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested, in that he, at , on , when he appeared before A.B., a Justice of the Peace, for the purpose of being attested for general service [or for service in the Regiment], to the question put to him, Do you now belong to the Royal Navy? answered "No"; whereas, he was serving, as he well knew, in H.M.S.

No. 71.

CHARGE-SHEET.

Sec. 38 (2).

The accused, No. , Gunner , Company, Royal Garrison Artillery, a soldier of the Regular Forces, is charged with—

Attempting to commit suicide,

in that he, at , on , with intent to commit suicide, cut his throat with a razor.

No. 72.

CHARGE-SHEET.

Sec. 40.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

An act to the prejudice of good order and military discipline,

in that he, at on , when sentry over soldiers in custody while employed on fatigue duty in the barrack yard, surreptitiously gave to No. , Private , Regiment, one of the said soldiers in custody, a pipe and some tobacco.

No. 73.

CHARGE-SHEET.

Sec. 40.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Conduct to the prejudice of good order and military discipline,

in that he, at , on , on returning as a soldier in custody to the guard-room on remand, said, "What the do I care for Captain [being the commanding officer of the accused]. He may go to for me," or words to that effect.

No. 74.

CHARGE-SHEET.

Sec. 40.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Conduct to the prejudice of good order and military discipline,

in that he, at , on , being liable to military duty, rendered himself unfit for the performance of such duty by reason of indulgence in alcoholic stimulants.

No. 75.

CHARGE-SHEET.

Sec. 40.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

An act to the prejudice of good order and military discipline,

in that he, at , on , made use of, or was in possession of, a document purporting to be a genuine pass [to be signed by], well knowing that it was not genuine [so signed].

No. 76.

CHARGE-SHEET.

Sec. 40.

The accused, No. , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Neglect to the prejudice of good order and military discipline,

in that he, at , on , after being duly warned by Colour-Serjeant to parade the regimental defaulters at 3 p.m. on that day, neglected to do so.

Note.—This form of charge is applicable when wilful disobedience is not imputed.

No. 77.

CHARGE-SHEET.

Sec. 40.

The accused, No. , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Neglect to the prejudice of good order and military discipline,

in that he, at , between and , when in charge of the recreation room, negligently conducted the supply of refreshments authorised to be issued therein, and through such negligence caused a loss to that institution of [or thereabout].

No. 78.

CHARGE-SHEET.

Sec. 41. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When on active service committing the offence of murder,

in that he, at Ismailia, on [or about] , when on active service, did feloniously, wilfully, and of malice aforethought kill and murder one Humantoo, a native of the East Indies, a camp follower.

No. 79.

CHARGE-SHEET.

Sec. 41. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, burglary,

in that he, at , on , at about midnight, forced open the back door of the dwelling house of , at , and entered the said dwelling house, with intent to commit a felony [and feloniously took therefrom two silver candle-sticks value or thereabout].

No. 80.

CHARGE-SHEET.

Sec. 41. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, robbery with violence,

in that he, at , on , feloniously assaulted , and took from his person a silver watch and chain, value [or thereabout].

No. 81.

CHARGE-SHEET.

Sec. 41. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

First charge. *Committing a civil offence, that is to say, stealing,*

in that he, at , on , [under pretence of making a purchase] stole from the shop of , a tobacconist, half a pound of tobacco or thereabout, value , belonging to the said .

Second charge. *Committing a civil offence, that is to say, receiving stolen goods knowing them to be stolen,*

in that he, at , on , was in possession of half a pound of tobacco or thereabout, value , the property of the said , which he knew to have been stolen.

No. 82.

CHARGE-SHEET.

Sec. 41. The accused, No. , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, forgery,

in that he, at , on [or about] , with intent to defraud, forged the name of Captain to a post office order for four pounds two shillings and sixpence [and thereby obtained the sum of four pounds two shillings and sixpence].

No. 83.

CHARGE-SHEET.

Sec. 41. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, uttering counterfeit coin,

in that he, at , on , in a public-house known as the Royal Arms, uttered a counterfeit half-crown, knowing the same to be counterfeit.

Note.—The offender utters counterfeit coin if he endeavours to pass it in payment of goods, &c., though it be not accepted, or if he tries simply to get it changed into other money.

No. 84.

CHARGE-SHEET.

Mil. Act, s. 10. The accused, No. , Private , a militiaman of the Battalion, Regiment, is charged with—

After having been discharged with disgrace from a part [parts] of His Majesty's forces, enlisting in the militia without declaring the circumstances of his discharge [discharges],
in that he, at , on , after having been discharged with ignominy [as incorrigible and worthless, &c.] from Regiment, enlisted in the militia for the county of , without declaring the circumstances of his discharge.

Note.—"Misconduct" is not included in the definition of "discharge with disgrace," under the Militia Act of 1882.

No. 85.

CHARGE-SHEET.

The accused, No. , Private , a militiaman of the Battalion, Regiment, is charged with— Mil. Act sec. 3.
Absenting himself without leave,
in that he, at , on , without leave lawfully granted, or reasonable excuse, failed to appear for the annual training of his battalion, and remained absent until apprehended by the civil power at , on

No. 86.

CHARGE-SHEET.

The accused, No. , Private , a militiaman of the Battalion, Regiment, is charged with— Mil. Act, sec. 26 (*a*).
Fraudulent enlistment,
in that he at , on , when belonging to the militia, and on service as part of the Regular Forces, without having fulfilled the conditions enabling him to enlist, enlisted into the militia [enrolled himself in the volunteers] for service in the Regiment.

No. 87.

CHARGE-SHEET.

The accused, No. , Private , a militiaman of the Battalion, Regiment, is charged with— Mil. Act, sec. 26 (*a*).
Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested,
in that he, at , on , when belonging to the Militia, when he appeared before A.B., a Justice of the Peace, for the purpose of being attested for the militia, to the question put to him, Do you now belong to the militia, answered "No"; whereas he belonged, as he well knew, to the Battalion, Regiment.

No. 88.

CHARGE-SHEET.

The accused, No. , Private , a yeoman of the Regiment, is charged with— Mil. Act, sec. 23. M. & Y. Act, 1901.
Absenting himself without leave,
in that he, at , on , without leave lawfully granted, or reasonable excuse failed to appear for the annual training of his regiment.

No. 89.

CHARGE-SHEET.

The accused, [name], belonging to the Army Reserve, is charged with— R. F Act, sec. 6.
Using insulting language to a non-commissioned officer acting in the execution of his office, and who would be his superior officer if the accused were subject to military law,
in that he, at , on , when receiving his pay from Colour-Sergeant , Regiment, said to him, "You are a cheat," or words to that effect.

No. 90.

CHARGE-SHEET.

The accused, [name], belonging to the Army Reserve called out for annual training, is charged with— R. F. Act, sec. 15.
Absenting himself without leave,
in that he, at , on , the place and time appointed for him to attend, without leave lawfully granted or reasonable excuse, failed to appear.

SECOND APPENDIX.

App. II.

FORMS AS TO COURTS-MARTIAL.

FORMS FOR ASSEMBLY OF COURTS-MARTIAL.

No. 1.—General.

Form of Order for the Assembly of a General Court-Martial.

orders by commanding the
(*Place, date.*)

The detail of officers as mentioned below will assemble at on the day of for the purpose of trying by a general court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].*

PRESIDENT.

is appointed president.†

Note.—These members and the waiting members may be mentioned by name, or the number and ranks and the mode of appointment may alone be named.

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

has been [*or where the convening officer has the appointment of a judge-advocate,* is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to

Signed this day of

By Order,
A.B.

* *Any opinion of the convening officer with respect to the composition of the Court* (*see Rules of Procedure* 20 *and* 21) *should be added here, thus:*

"In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available," *or as the case may be.*

† *Add here, if the President is under the rank of field officer, and the officer convening the Court is not under that rank,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available."

No. 2.—District.

Form of Order for the Assembly of a District Court-Martial.

orders by commanding

(*Place, date.*)

The detail of officers as mentioned below will assemble at on for the purpose of trying by district court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them.]‡

PRESIDENT.

is appointed president.§

MEMBERS.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to

Signed this day of

By Order,

A.B.

Note.—These members and the waiting members (if any) may be mentioned by name, or the number and ranks and the mode of appointment may alone be named.

‡ *Any opinion of the convening officer with respect to the composition of the Court* (*see Rules of Procedure* 20 *and* 21) *should be added here, thus:*

"In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available," *or as the case may be.*

§ *If the president is under the rank of field officer, and the convening officer is not under that rank, after the words* "appointed president," *add* "In the opinion of the convening officer a field "officer is not, having due regard to the public service, available," *and if the president is under the rank of captain, add* "In the opinion "of the convening officer a captain is not, having due regard to the public service, available."

If a judge-advocate is appointed, his appointment will be notified or made in the same manner as in the Form of Order for the assembly of a general court-martial.

No. 3.—Regimental.

Form of Order for the Assembly of a Regimental Court-Martial.

orders by commanding

(*Place, date.*)

The officers mentioned below will assemble at on for the purpose of trying by regimental court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].

PRESIDENT.

is appointed president.¶

MEMBERS.

App. II.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to

Signed this day of

By Order,

A.B.

¶ *If the president is under the rank of captain, after the words* "appointed president," *add* "the court-martial being held on the "line of march," *or* "the court-martial being held on board the " , a ship* commissioned by His Majesty," *or* "in "the opinion of the convening officer a captain is not, having due "regard to the public service, available."

* If the ship is not His Majesty's ship insert "not."

No. 4.—Field General.

[*See below, p.* 580.]

No. 5.—Declaration for Suspension of Rules.

Form of Declaration of Military Exigencies or the Necessities of Discipline under Rule of Procedure 104.

In my opinion [*military exigencies, namely (*state them*)] render it [†impossible] to observe the provisions of rules‡ on the trial of by court-martial assembled pursuant to the order of the of

Signed at this day of

A.B.

* [*or* the necessities of discipline.]
† [*or* inexpedient.]
‡ State the rule or rules which cannot be observed. (See Rule 104.)

[Instruction.—*This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.*]

Army Form A. 9.

FORM OF PROCEEDINGS OF COURTS-MARTIAL.

Form of Proceedings of a General Court-Martial (including some of the incidents which may occur to vary the ordinary course of procedure), with Instructions for the guidance of the Court.

PROCEEDINGS OF A GENERAL COURT-MARTIAL, held at on the day of 19 by order of Commanding dated the day of 19 .

PRESIDENT.

Rank.	*Name.*	*Regiment.*

MEMBERS.

Rank.	*Name.*	*Regiment.*

————————, Judge-Advocate.

At o'clock the Court opens.

Trial of*

* *Here insert No., Rank, Name and Regiment, and appointment (if any).*

N.B.—The proper Army Forms, to be obtained from Convening Officers, will be used in accordance with the instructions.

The same Form will be used for district courts-martial, and will apply as nearly as may be, with the substitution of "district" for "general," and with the omission, where there is no Judge-Advocate, of all reference to the Judge-Advocate.

For regimental courts-martial an Army Form will be used similar to the Form for a general court-martial, with the substitution of "regimental" for "general," and with the omission of all reference to the Judge-Advocate.

(1.) The order convening the Court is read, and [a copy thereof] is marked , signed by the president, and attached to the proceedings.

The charge-sheet and the summary [*or* abstract] of evidence are laid before the Court.

[Instruction.—*All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president, and attached to the proceedings.*]

Note:—Before certifying that the Court have satisfied themselves as provided by Rules 22 and 23, the President will, in every case where a Court of Inquiry has been held respecting a matter upon which a charge against the accused is founded, insert an asterisk after the words "Rules of Procedure 22 and 23," and enter in red ink and sign a footnote at the bottom of the first page of the proceedings, to the following effect:—

"* I have compared the names of the officers who served upon the Court of "Inquiry respecting the matter on which the ——— (first) charge against the "accused has been founded, with those of the officers detailed to serve on this Court-"Martial.

———————

"(*Signature of President.*)"

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

(2.)†

† *Here state Rank and Name, and Regiment (if any).*

appears as prosecutor, and takes his place.

The above-named person to be tried is brought before the Court.

VARIATION.

appears as counsel for the prosecutor.
appears to assist [*or* as counsel for] the accused.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over?

Question by the President to the accused.

No.

Answer by accused.

[Instruction.—*The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.*]

VARIATIONS.

CHALLENGING OFFICERS.

Answer.—I object to

Question to Accused.—Do you object to any other person?

(*This question must be repeated until all the objections are ascertained.*)

Answer.—

[*If the president is objected to, that objection will be dealt with first, otherwise, an objection to the junior officer will be disposed of first.*]

App. II.

Objection to the President.

Question to accused.—What is your objection to me as president?
Answer by accused.—
The accused, in support of his objection to the president, requests permission to give evidence himself and [or] to call
&c., &c.
The accused gives evidence himself and [or] is called into Court, and is questioned by the accused.
The Court is closed to consider the objection.
Decision.—The Court disallow the objection.
The Court is re-opened, and the above decision is made known to the accused.

or

Decision.—The Court allow the objection.
The Court is re-opened, and the above decision is made known to the accused, and the Court adjourn.

Objection to Member.

Question to accused.—What is your objection to
(the junior officer objected to)?
Answer by accused.—
The accused in support of his objection to , requests permission to give evidence himself and [or] to call
&c., &c.
The accused gives evidence himself and [or] is called into Court, and is questioned by the accused.
The Court is closed to consider the objection.
Decision.—The Court disallow the objection.
The Court is re-opened, and the above decision is made known to the accused.

or,

Decision.—The Court allow the objection.
The Court is re-opened, and the above decision is made known to the accused.
retires.
Fresh Member.—* takes his place as a member of the Court.
He appears to the Court to be eligible and not disqualified to serve on this Court-Martial.
Question to accused—Do you object to be tried by
(the fresh member)?
Accused.—
(If he objects, the objection will be dealt with in the same manner as the former objection.)
Question to accused.—What is your objection to
(the junior of the officers objected to)?
(This objection will be dealt with in the same manner as the former objection.)
The Court adjourn for the purpose of fresh members being appointed.

or,

The Court is of opinion that, in the interests of justice, and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because [*here state the reasons*].
At o'clock on the court resumed their proceedings, and an Order appointing another president [*or*, fresh officers] is read, marked and attached to the proceedings.
The Court satisfy themselves with respect to such president [*or* fresh officers] as provided by Rule of Procedure 22.
[Instruction.—*The procedure as to challenging a new president and fresh officers, and the procedure, if any objection is allowed, will be the same as above.*]
The president and members of the Court, as constituted after the above proceedings, are as follows:—

PRESIDENT.

Rank.	*Name.*	*Regiment.*

* *Insert Rank, Name, and Regiment.*

MEMBERS.

Rank.	*Name.*	*Regiment.*

The President, Members, and Judge-Advocate are duly sworn (also any officer under instruction).

[Instruction.—1. *The witnesses if in Court, other than the prosecutor and the accused, should be ordered out of the Court at this stage of the proceedings.*

2. *Also any interpreter and short-hand writer should be now sworn.*

Do you object to as interpreter? *Question to accused.*

A.

[Instruction.—*In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.*]

Do you object to as short-hand writer? *Q.*

A.

[Instruction.—*In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.*]

CHARGE-SHEET.

(3.) The charge-sheet is signed by the president, marked and annexed to the proceedings. *Charge-sheet.*

VARIATION.

If the accused has elected to be tried instead of being dealt with summarily by his commanding officer.

The prosecutor informs the Court that the accused has elected to be tried by this Court instead of being dealt with summarily by his commanding officer.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [*first*] charge against you, which you have heard read? *Question to accused.*

A.

[Instruction.— *Where there is more than one charge the foregoing question will be asked after each charge is read, the number of the charge being stated.*]

[Instruction.—*If the accused pleads guilty to any charge, the provisions of Rule* 35 (B) *must be complied with, and the fact that they have been complied with must be recorded.*]

VARIATIONS.

The accused objects to the charge.

What is your objection? *Question to accused.*

A.

The Court is closed to consider their decision.

The Court disallow the objection [*or*, the Court allow the objection, and agree to report to the convening officer]. *Decision.*

The Court is re-opened, and the above decision is read to the accused.

The Court proceed to the trial [*or* adjourn].

The accused pleads to the general jurisdiction of the Court. *Plea to jurisdiction.*

What are the grounds of your plea? *Question to accused.*

A.

Do you wish to give evidence yourself or produce any evidence in support of your plea?

A.

Witnesses. Witness is examined on oath.

[Instruction.—*The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs* (6) *and* (7). *The prosecutor will be entitled to reply after all the evidence is given.*]

Decision. The Court is closed to consider their decision.

The Court allow [*or* overrule] the plea [*or* resolve to refer the point to the convening authority, *or* decide specially that].

The Court is re-opened, and the above decision is read to the accused.

The Court proceed to the trial [*or* adjourn].

VARIATION.

Plea in bar of trial. Question to accused. Accused, besides the plea of guilty [*or*, not guilty], offers a plea in bar of trial.

What are the grounds of your plea?

A.

Q. Do you wish to give evidence yourself or to produce any evidence in support of your plea?

A.

Witnesses. Witness examined on oath.

[Instruction.—*The examination, &c., of the accused. if he wishes to give evidence, and of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs* (6) *and* (7). *The prosecutor will be entitled to reply after all the evidence is given.*]

Decision. The Court is closed to consider their decision.

The Court allow the plea and resolve to adjourn [*or* to proceed to the trial on another charge] [*or* the Court overrule the plea].

The Court is re-opened, and the above decision is read to the accused.

The Court adjourn [*or* proceed with the trial on another charge] [*or* proceed with the trial].

Refusal to plead. As the accused does not plead intelligibly [*or* refuses to plead to the above charge, *or* does not plead guilty to the above charge] the Court enter a plea of "Not guilty."

PROCEEDINGS ON PLEA OF GUILTY.

(4.) The accused [*number* , *rank* *name* , *regiment*] is found guilty of the charge [all the charges]

or is found guilty of the charge and is found not guilty of the charge.

[Instruction.—*If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on those other charges; and in that case the court will be re-opened and the charge on which the record is guilty must be read to the accused again.*

The accused may in accordance with rule 37 (B) *make any statement he wishes in reference to the charge.*]

The summary of evidence [*or* abstract of evidence] is read, marked , signed by the president, and attached to the proceedings.

[Instruction.—*If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the confirming officer to know all the circumstances connected with the case will be taken as in paragraph* 5. *No address will be allowed.*]

VARIATION.

The Court being satisfied from the statement of the accused [or the summary of evidence, *or otherwise*], that the accused did not understand the effect of the plea of "guilty," alters the record, and enters a plea of "not guilty."

Evidence as to mitigation of punishment.

[Instruction.—*The Court will then proceed in respect of this charge as in paragraph* 5.]

Do you wish to make any statement in mitigation of punishment? *Question to accused.*

No. *A.*

or

The accused in mitigation of punishment says [*or if the statement is in writing*, hands in a written statement, which is read, marked , signed by the president, and attached to the proceedings].

[Instruction.—*If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

If the statement is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

VARIATION.

The Court give permission to the accused to give evidence himself and [or] to call witnesses to prove his above statement that [*here specify the statement which is to be proved.*]

[Instruction.—(1.) *The examination, &c., of witnesses called in pursuance of this permission will proceed in the same manner as under paragraph* 6.

(2.) *The procedure as to sentence, recommendation to mercy, and confirmation will be as in paragraphs* 12 *and* 14.]

Evidence as to character.

Do you wish to give evidence yourself or to call any witnesses as to character. *Question to accused.*

Yes. [No.] *A.*

[Instruction.—(1) *The examination, &c., of witnesses as to character will proceed as in paragraph* (6).

(2) *Evidence as to character and particulars of service will be taken as in paragraph* 12.]

PROCEEDINGS ON PLEA OF NOT GUILTY.

(5.) [*If the prosecutor makes an address.*] The prosecutor makes the following address, [*or, if the address is written*, hands in a written address, which is read, marked , signed by the president, and attached to the proceedings.]

[Instruction.—*Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.*]

The prosecutor proceeds to call witnesses.

(*) being duly sworn is examined by the prosecutor, *First witness for prosecution.*

* *Here insert his number, rank, name and regiment, and appointment (if any), or other description.*

Cross-examined by the Accused.

App. II.

Re-examined by the Prosecutor.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that Rule* 83 (B) *has been complied with should be recorded.*]

The witness withdraws.

VARIATIONS.

The accused declines to cross-examine this witness.

[Instruction.—*In every case where the accused does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.*]

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

The accused [*or* the prosecutor] objects to the following question :—

The Court is closed to consider their decision.

The Court overrule [*or* allow] the objection, and the Court is re-opened and the decision announced.

The witness, on his evidence being read to him, makes the following explanation *or* alteration :—

Examined by the prosecutor as to the above explanation *or* alteration.

Examined by the accused as to the above explanation *or* alteration.

The prosecutor and the accused decline to examine him respecting the above explanation *or* alteration.

Second witness for prosecution.

being duly sworn, is examined by the prosecutor. (*The examination, &c., of this and every other witness proceeds as in the case of the first witness.*)

VARIATION.

The Court think it expedient to continue to sit after six o'clock in the afternoon, on the ground that [*state the grounds*].

Adjournment.

At o'clock the Court adjourn until o'clock on the

Second day.

On the of 19 , at o'clock, the Court re-assemble, pursuant to adjournment, present the same members as on the of

VARIATIONS.

[Instructions.—(1) *If a member is absent, and his absence will reduce the Court below the legal minimum, and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.*

(2) *If either the president or the Judge-Advocate is absent, and cannot attend within reasonable time, the Court will adjourn, and the president or senior member present will thereupon report the case to the convening authority. (See Rules of Procedure 66 and 102).*]

(*Rank—Name—Regiment*) being absent. *Absent member.*

(*The absence is accounted for.*)

A medical certificate [*or* letter, *or as the case may be*] is produced, read, marked , and attached to the proceedings.

The Court adjourn until .

or,

There being present (*not less than the legal minimum*) members, the trial is proceeded with.

An order bearing date , appointing (*the senior member*) president of the Court-martial in the place of is read, marked , signed by the president, and attached to the proceedings. *New President.*

The trial is proceeded with.

An order, bearing date , appointing , to act as Judge-Advocate in the place of , who , is read, marked , signed by the president, and attached to the proceedings, and the new Judge-Advocate duly sworn. *New Judge Advocate.*

The trial is proceeded with.

[Instructions.—(1) *If the Court, in consequence of the adjournment having been prolonged by the senior officer on the spot, or otherwise, do not meet on the day to which they previously adjourned, or if the adjournment was until further orders, the words "pursuant to adjournment" will be omitted from the above Form, and the cause of their meeting at the above time will be entered in the proceedings.*

(2) *If the place of meeting has been altered by orders, or otherwise, the place of meeting and the reason for meeting at that place will be entered in the proceedings.*]

Examination [cross-examination] of continued.

The prosecution is closed.

DEFENCE.

Do you apply to give evidence yourself as a witness? *Question to accused.*

Yes. [No.] *A.*

Do you intend to call any other witness in your defence? *Q.*

Yes. [No.] *A.*

Is he a witness as to character only? *Q.*

A.

VARIATION.

[*If the accused is defended by counsel or by an officer having the rights of counsel, and does not apply to give evidence himself.*]

Do you wish to make any statement in addition to the address made by your counsel [*or*]?

(6.) [Instruction.—*If the accused does not wish to give evidence himself, and calls no witnesses to the facts of the case, and, if defended by counsel or by an officer having the rights of counsel, does not wish to make a statement in addition to the address by that counsel or officer, adopt* (6) *and omit* (7) *and* (8).]

The prosecutor addresses the Court upon the evidence for the prosecution as follows [*or, if the address is written,* hands in a written address, which is read, marked , signed by the president, and attached to the proceedings.]

[Instruction.—*Where the address of the prosecutor is not in writing the Court should record so much as appears to them material and so much as the prosecutor requires to be recorded.*]

Have you anything to say in your defence? *Question to accused.*

App. II.

VARIATION.

The Court, at the request of the accused, adjourn until to enable him to prepare his defence.

The accused in his defence says [*or* hands in a written address, which is marked signed by the president, and attached to the proceedings].

[Instruction.—*If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

If the address is not in writing and not delivered by the accused himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

First witness as to character.

The accused calls the following witnesses as to character:

* is duly sworn.

**Here insert his number, rank, name, and regiment, and appointment (if any), or other description.*

Examined by the Accused.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that Rule* 83 (B) *has been complied with should be recorded.*]

The witness withdraws.

VARIATION.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation *or* alteration.

Examined by the accused as to the above explanation *or* alteration.

Examined by the prosecutor as to the above explanation *or* alteration.

The accused and the prosecutor decline to examine him respecting the above explanation *or* alteration.

(7.) [Instruction.—*If the accused gives evidence himself, but calls no other witnesses to the facts of the case, adopt* (7) *and omit* (6) *and* (8).]

The accused takes his stand at the place from which other witnesses give their evidence.

The accused is duly sworn.

The accused gives his evidence.

Cross-examined by the Prosecutor.

The accused gives any evidence that another witness might give on re-examination.

Examined by the Court.

The evidence of the accused is read to him.

[Instruction.—*The fact that Rule* 83 (B) *has been complied with should be recorded.*]

The accused withdraws from the place from which he has given his evidence.

VARIATION.

The prosecutor declines to cross-examine the accused.

The accused, on his evidence being read to him, makes the following explanation *or* alteration.

Examined by the prosecutor as to the above explanation *or* alteration.

The prosecutor declines to examine him respecting the above explanation *or* alteration.

The prosecutor addresses the Court upon the evidence for the prosecution and the evidence of the accused as follows [*or, if the address is written,* hands in a written address which is read, marked , signed by the president, and attached to the proceedings.]

[Instruction.— *When the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.*]

Have you anything to say in your defence ? *Question to accused.*

VARIATION.

The Court, at the request of the accused, adjourn until to enable him to prepare his defence.

The accused in his defence says [*or,* hands in a written address, which is read, marked , signed by the president, and attached to the proceedings.]

App. II.

[Instruction.—*If the address of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words.*

If the address is not in writing and not delivered by the accused himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

First witness as to character.

The accused calls the following witnesses as to character:

* is duly sworn.

**Here insert his number, rank, name, and regiment, and appointment (if any), or other description.*

Examined by the Accused.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that Rule* 83 (B) *has been complied with should be recorded.*]

The witness withdraws.

VARIATION.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation *or* alteration.

Examined by the accused as to the above explanation *or* alteration.

Examined by the prosecutor as to the above explanation *or* alteration.

The accused and the prosecutor decline to examine him respecting the above explanation *or* alteration.

(8.) [Instruction.—*If the accused calls other witnesses to the facts of the case, whether he himself gives evidence or not, or if the accused,*

being defended by counsel or by an officer having the rights of counsel, wishes to make a statement in addition to the address by the counsel or officer, then omit paragraphs (6) *and* (7), *and adopt* (8).]

Have you anything to say in your defence ? *Question to accused.*

VARIATION.

The Court, at the request of the accused, adjourn until to enable him to prepare his defence.

The accused in his defence says [*or if his address is in writing*, hands in a written address, which is read, marked , signed by the president, and attached to the proceedings].

[Instructions.—(1) *If the defence of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

(2) *If the address is not in writing and is not delivered by the accused himself, the material portions should be recorded.*

(3) *In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.*]

* is duly sworn (*a*). * *Here insert his number, rank, name, and regiment, and appointment (if any), or other description.*

Examined by the Accused.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that Rule* 83 (B) *has been complied with should be recorded.*]

The witness withdraws.

VARIATIONS.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation *or* alteration.

(*a*) For the evidence of the accused, the form in (7) should be followed.

App. II. Examined by the accused as to the above explanation *or* alteration.

Examined by the prosecutor as to the above explanation *or* alteration.

The accused and the prosecutor decline to examine him respecting such explanation *or* alteration.

[*Where the accused is defended by counsel or an officer having the rights of counsel.*] The accused makes the following statement in addition to the address by his counsel [*or*] (*a*).

The prosecutor [by leave of the Court] calls witnesses in reply.

The accused makes the following address [*or, if the address is in writing*, hands in a written address, which is read, marked , signed by the president, and attached to the proceedings].

The prosecutor makes the following reply [*or, if the reply is in writing*, hands in a written reply, which is read, marked , signed by the president, and attached to the proceedings] ;

or,

The prosecutor declines to make a reply.

[Instruction.— *Where the reply of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.*

If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment].

Variations.

The Court, at the request of the accused, adjourn until to enable the accused to prepare his address.

The Court, at the request of the prosecutor, adjourn until to enable the prosecutor to prepare his reply.

Summing up.

(9.) The Judge-Advocate makes the following summing up [*or, if the summing up is in writing*, hands in a written summing up, which is read, marked , signed by the president, and attached to the proceedings].

Variations.

The Judge-Advocate and the Court think a summing up unnecessary.

or,

The Court, at the request of the Judge-Advocate, adjourn until to enable him to prepare his summing up.

(*a*) The accused must make his statement at the close of the case for the prosecution and before the address by his counsel.—See Rule 94.

FINDING.

(10.) The Court is closed for the consideration of the finding. *Finding.*

The Court find that the accused (*No.—Rank—Name—Regiment*) *Not Guilty.*
is not guilty of the charge [and honourably acquit him of the same], but is guilty of the ;

or,

is guilty of the charge [all the charges] ; *Guilty.*

or,

is guilty of the charge, and guilty of the charge with the exception of the words [*or* with exception that]

or,

is not guilty of desertion, but is guilty of absence without leave ;

[Instruction.—*Any special finding allowed by Section* 56 *of the Army Act may be expressed in this form.*]

or,

find that the accused did [*Here set out such particulars in any charge as the Court find to be proved*], but the Court doubt whether such facts constitute in law the offence stated in the charge, or in the charge, or in the charge, and therefore they find him guilty of the offence in such one of those charges as the facts in law constitute ; *Special findings.*

or,

adjourn for the purpose of consulting the convening [*or, as the case may be,* confirming] officer ;

On re-assembly on the day of , and on reading the opinion of , which is marked and annexed to the proceedings, find that the accused, &c.

PROCEEDINGS ON ACQUITTAL OF ALL THE CHARGES.

(11.) The Court find that the accused (*No.—Rank—Name—Regiment*) is not guilty of the charge [*or* all the charges] ; *Acquittal.*

or,

is not guilty of the charge [*or* all the charges] and honourably acquit him of the same.

The findings are read in open Court, and the accused is released.

Signed at , this day of 19 .

(Judge-Advocate.) (President.)

VARIATION.

The Court find that the accused [*No.—Rank—Name—Regiment*] is, by reason of insanity, unfit to take his trial ; *Insanity.*

or,

is guilty of the charge *or* charges, but was insane at the time of the commission of the offences specified in those charges.

Signed at , this day of .

(*Signature*)

(Judge-Advocate.) (President.)

Confirmed,

At this day of

(*Signature of Confirming Authority.*)

PROCEEDINGS ON CONVICTION.

Before Sentence.

(12.) The Court being re-opened the accused is again brought before it. *Evidence of character, &c.*

(*Number—Rank—Name—Regiment*) is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused?

Answer by the witness. I produce this statement.

The witness hands in the statement, which should be in the following form:

A.F. B. 296. STATEMENT as to CHARACTER and PARTICULARS of SERVICE of ACCUSED.

Number—Rank—Name—Regiment , [*or as the case may be*].

(1) The following is a fair and true summary of the entries in the regimental and [squadron, troop, battery, *or* company] conduct sheets of the accused, exclusive of convictions by a court-martial or a civil court:—

	Within last 12 months.	Since Enlistment.
For ,	times	times.
For ,	times	times.

Number of instances of gallantry or distinguished conduct.

or,

There are no entries in the conduct sheets of the accused.

[Instruction.—*If the charge is for drunkenness, the entries for drunkenness must be stated separately.*]

(2) The accused has not been previously convicted,

or,

The previous convictions of the accused by a court-martial or a civil court are set out in the Schedule annexed to this statement.

(3) The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for beginning on the day of

(4) The accused has been in confinement, awaiting trial on the present charges, for days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital.

(5) The present age of the accused according to his attestation paper is .

(6) The date of his attestation specified in his attestation paper is .

(7) The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .

(8) The accused is entitled to deferred pay or gratuity in respect of service.

(9) The accused is entitled to reckon service for the purpose of determining his pension, &c.

[Instruction.—*If the Court is a general or district court-martial there should be added to the above the following*]:—

(10) The accused is in possession of or entitled to no military decoration or military reward which the Court can forfeit [*or* is in possession of *or* entitled to (*state any military decoration or reward which the Court can forfeit*)].

(11) (*If the accused is a warrant officer not holding an honorary commission.*) The accused before he was made a warrant officer last held the regimental rank of .

(12) (*In the case of an officer or a warrant officer holding an honorary commission.*) The accused holds in the army the [honorary]

rank of , dated , and in his regiment [*or* corps *or* department] the rank of dated

(13) The accused has served as a non-commissioned officer continuously, without reduction, to the present date :—

In the rank of	,	years.
In the rank of	,	years.
In the rank of	,	years.

[Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*]

SCHEDULE.

Of convictions by a court-martial or civil court of accused, *No.* , *Rank* , *Name* , *of* regiment [*or as the case may be*].

[Instruction.—*A verbatim extract from the regimental book stating these convictions must be inserted.*]

I hereby certify that the foregoing schedule of convictions is a true extract from the regimental books in my custody.

Signed this day of

A.B.

The above statement [with the schedule of convictions] is read, marked , signed by the President and annexed to the proceedings.

Is the accused the person named in the statement which you have heard read ? *Question by the President.*

Answer by the witness.

Have you compared the contents of the above statement with the regimental books ? *Q.*

A.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries ? *Q.*

A.

Cross-examined by the Accused.

Re-examined.

or,

The accused declines to cross-examine this witness.

[Instruction.—*Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the accused on which the Court desire to have information for the purpose of their sentence.*

At the request of the accused, or by the direction of the Court, the regimental books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.

The accused is entitled to call the attention of the Court to any entries in the regimental books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.

When all the evidence on the above matters has been given, the accused may address the court thereon.

If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable

App. II. *to any exceptional punishment, in addition to that to be awarded by the Court (for instance, forfeiture or reduction of corps pay), the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.*

When, in consequence of an offence being unusually prevalent in a garrison or station, a local order has been published drawing attention thereto and it is desired to bring the matter to the notice of the court, the prosecutor must produce a certified copy of the local order, and the copy should be attached to the proceedings.]

The court is closed for the consideration of the sentence.

SENTENCE.

[Instruction.—*The provisions of sections* 44, 182, *and* 183 *of the Army Act must be carefully attended to by the Court in passing sentence.*]

Sentence. The Court sentence the accused (*No.—Rank—Name—Regiment.*)

[Instruction.—*The sentence is to be marginally noted in every case.*]

In the case of an officer :—

Death. (*a*) to suffer death by being shot [hanged].

Penal servitude years. (*b*) to suffer penal servitude for the term of years [*or* for life].

Imprisonment H.L. for (*c*) to be imprisoned [with hard labour] for .

[Instruction.—(1) *As to the term of imprisonment see below in the case of a soldier.*

(2) *A sentence of cashiering should precede a sentence of imprisonment or penal servitude.*]

Cashiered. (*d*) to be cashiered.

Dismissed. (*e*) to be dismissed from His Majesty's service.

Forfeiture of seniority of rank. (*f*) [*Where the officer's army rank is superior to his regimental rank.*]

to take rank and precedence as in the regiment as if his appointment to that regiment bore date the day of , and to take rank and precedence in the Army as if his appointment as bore date the day of .

[*Or, where the officer's army and regimental rank are the same.*]

to take rank and precedence in the regiment and in the Army as if his appointment as bore date the day of

[*Or, where the officer has no regimental rank.*]

to take rank and precedence in the Army as if his appointment as in the Army bore date the day of .

[Instruction.—*In each case the form may be varied so that the Court may exercise the power under the Army Act, s.* 44 (*f*), *and Rule of Procedure* 47 *of sentencing to forfeiture of seniority either in the corps, or in the Army, or in both.*]

Reprimand or severe reprimand. (*g*) to be reprimanded [*or* severely reprimanded].

(*h*) to forfeit the [*state the medal, clasp, and decoration, or any of them, which is to be forfeited*] with any annuity or gratuity attached thereto.

(*i*) to be put under stoppages of pay until he has made good the sum of [*or, as the case may be*].

In the case of a soldier:—

(*j*) to suffer death by being shot [hanged]. *Death.*

(*k*) to suffer penal servitude for the term of years [*or* for life]. *Penal servitude years.*

(*l*) to be imprisoned (*a*) [with hard labour] for *Impt. H.L., for*

(*m*) to undergo detention for *Detention.*

(*n*) to suffer field punishment, that is to say, field punishment No. 1, for *Field punishment No. 1.*

(*o*) to suffer field punishment, that is to say, field punishment No. 2, for *Field punishment No. 2.*

[Instruction.—(1) *If a person charged is at the time of sentence undergoing imprisonment or detention under a former sentence, the new sentence must not exceed such a term as will make up a period of two years from the date of the former sentence.*

(2) *In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence of penal servitude, imprisonment, detention, or field punishment, although those sentences necessarily involve a reduction to the ranks.*]

(*p*) to be discharged with ignominy from His Majesty's service. *Discharged with ignominy.*

(*q*) [*if a volunteer*] to be dismissed from His Majesty's service. *Dismissed.*

(*r*) [*if a non-commissioned officer* (*b*)]. *Forfeiture of seniority, and reduction.*

(1) to take rank and precedence in the as if his appointment to the rank of bore date ; *or*

(2) to be reduced to the rank of serjeant ; *or*

(3) to be reduced to the rank of corporal ; *or*

(4) to be reduced to the rank of bombardier ; *or* to be reduced to the rank of second corporal ; *or*

(5) to be reduced to [*a lower grade*] *or* to be reduced to the ranks.

(*s*) to be fined. *Fined l. s. d.*

(*t*) to be put under stoppages of pay until he has made good the value of the following articles, viz. :— *Stoppages.*

or [and] until he shall have made good the sum of , in respect of [*state the circumstances in respect of which the same is awarded*].

(*u*) to forfeit all ordinary pay for a period of . *Forfeiture of pay.*

(*w*) to forfeit [*state number or* all] good-conduct badge [*or* badges] with the pay attached thereto.

to forfeit deferred pay in respect of . [all *or* calendar months *or* years] previous service.

to forfeit [all *or* years, *or* calendar months] past service for the purpose of determining pension.

to forfeit the [*state medal, clasp, and decoration, or any of them, which is to be forfeited*] with any annuity or gratuity attached thereto (*c*).

[Instruction.—(1) *An offender may be sentenced to all or any of the above forfeitures.*

(*a*) As to form of sentence, see K.R., para. 585. The word month in a sentence of imprisonment, detention, or field punishment, means calendar month unless the contrary is expressed: see note to Army Act, s. 190 (35) and Rule 134 (*c*). See also s. 44 (10).

(*b*) A sentence of reduction from or to an acting rank is void ; *e.g.*, a sentence on a corporal to be reduced to the rank of lance-corporal is void. See s. 183 (3) note.

(*c*) Under the Pay Warrant 1907, Art. 1158, a soldier convicted by a court-martial of desertion, fraudulent enlistment, or an offence under s. 17 or 18 of the Army Act, forfeits all medals and decorations (other than the Victoria Cross) without any award by the court-martial. In such cases therefore an award should not be made. The same is the case with a soldier discharged with ignominy, or for misconduct, &c.

App. II.

(2) *In the case of a warrant officer, a district court-martial must use one of the following forms; a general court-martial may use them in lieu of, or in addition to, the foregoing forms, see s.* 182 (2).]

(*u*) To be dismissed from the service.

or,

(*v*) To be reduced in the list of his rank as if his appointment thereto bore date the day of

or,

To be reduced to an inferior class of warrant officer; that is to say, to

or,

(*w*) To be reduced to [*a lower grade*];

or,

(*x*) [*If he was originally enlisted as a soldier, but not otherwise*]

To be reduced to the ranks.

RECOMMENDATION TO MERCY.

The Court recommend the accused to mercy on the ground that .

The Court recommend that of the service forfeited under section 79 of the Army Act shall be restored on the ground that .

SIGNATURE.

Signed at , this day of 19 .

(*Signature*)
Judge-Advocate.

(*Signature*)
President.

REVISION.

Revision.

(13.) At , on the day of at o'clock, the Court re-assemble by order of for the purpose of re-considering their

Present, the same members as on the .

VARIATION.

[Instructions.—*If a member is absent and the absence will reduce the Court below the required minimum, or if he is the president, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present shall thereupon report the case to the convening officer.*]

Absent member.

[*Rank, name, regiment*] being absent.
[*The absence is accounted for.*]
A medical certificate [*or* letter, *or as the case may be*] is produced, read, marked , and attached to the proceedings.
There being present [*not less than the required minimum*] members the Court proceeds.

Revised finding.

The letter [order *or* memorandum] directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding [finding and sentence] [*or* sentence] is read, marked , signed by the president, and attached to the proceedings.

The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings:

a. do now revoke their finding and sentence, and find and sentence the accused to

or,

b. do now revoke their sentence, and now sentence the accused, &c., &c.,

or,

c. do now respectfully adhere to their sentence [*or* finding and sentence].

Sentence.

Signed at , this day of 19 .

Judge-Advocate. President.

CONFIRMATION.

Confirmation.

(14.) Confirmed,

or,

I vary the sentence so that it shall be as follows , and confirm the finding and the sentence as so varied,

or,

I confirm the finding and sentence of the Court, but mitigate [remit, *or*, commute].

or,

[*Where it is necessary to confirm the special finding on several alternative charges.*]

I confirm the finding on and charges, and I confirm the special finding relating to the and charges, and declare that that finding amounts to a finding of guilty on the charge, and of not guilty on the and charges.

I confirm the sentence but mitigate [remit, or commute];

or,

[*Where the confirming officer desires partly to reserve his confirmation,*]

I confirm the finding of the Court on the and charges and reserve for confirmation by superior authority the finding on the and charges, and the sentence;

or,

I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority;

or,

I confirm the findings of the Court and the sentence of the Court as to , and reserve the sentence so far as it for confirmation by superior authority;

or,

[*Where the finding is not confirmed,*]

Not confirmed [*the reasons for non-confirmation may be stated*].

Signed at , this day of 19 .

(*Signature of Confirming Authority.*)

[Instruction.—*Any remarks of the confirming authority are to be added separately after the confirmation, and a space of at least half a page is to be left for the purpose.*]

[*Where the declaration respecting a special finding on alternative charges is added subsequently to the confirmation* (*Rule* 55),]

I declare that the special finding relating to the and charges amounts to a finding of guilty on the charge, and of not guilty on the and charges.

Signed at , this day of 19 .

(*Signature of Authority.*)

App. II.

FORM OF SUMMONS.

Form of Summons to a Civil Witness.

To

Whereas a court-martial has been ordered to assemble at on the day of 19 , for the trial of , of the regiment, I do hereby summon and require you *A.* *B.* to attend, as a witness, the sitting of the said Court at on the day of at o'clock in the forenoon [and to bring with you the documents hereinafter mentioned, namely,], and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at on the day of 19 .

(Signature)

Convening Officer [*or* Judge-Advocate *or* President of the Court *or* Commanding Officer of the Accused].

FORM FOR ASSEMBLY AND PROCEEDINGS OF FIELD GENERAL COURT-MARTIAL (*a*).

PROCEEDINGS.

*State the place and country. A. Order convening the court.

*At , this day of 19 .

Beginning of Form where Troops are not on Active Service.

Whereas complaint has been made to me, the undersigned, an officer in command of , in the above-named country, that the persons named in the annexed schedule, being subject to military law, and under my command, have committed the offences in the said schedule mentioned, being offences against the property or person of inhabitants of or residents in the above-mentioned country.

Beginning of Form where Troops are on Active Service.

Whereas it appears to me, the undersigned, an officer in command of on active service, that the persons named in the annexed schedule, and being subject to military law, have committed the offences in the said schedule mentioned.

End of Form applicable to all cases.

And I am of opinion that it is not practicable that such offences should be tried by an ordinary general court-martial;

†Omit except where convening officer is not a commanding officer and is below rank of field officer.

[†and that it is not practicable to delay the trial for reference to a superior qualified officer].

I hereby convene a field general court-martial to try the said persons, and to consist of

PRESIDENT.

Rank.	*Name.*	*Regiment.*

(*a*) See Rules 105–123.

MEMBERS.

Rank.	*Name.*	*Regiment.*

[‡I am of opinion that three officers are not available having due regard to the public service.]

(Signed) .

‡ Omit except where the court-martial consists of two officers only.

I certify that the above Court assembled on the day of and duly tried the persons named in the said schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that schedule.

B. Certificate of president as to proceedings.

Signed this day of , 19 .

C—— *D*——

President of the Court-martial.

I have dealt with the findings and sentences in the manner stated in the last column of the above schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences; [*and I am of opinion that it is not practicable, having due regard to the public service, to delay the cases for confirmation by any superior qualified authority].

C. Confirmation.

*Omit except where under rules it is ordinarily the duty of the confirming officer to reserve the case.

Signed this day of 19 .

E—— *F*——

Field [*or* General] Officer in the force [or commanding].

I have dealt with the reserved findings and sentences in the manner stated in the last column of the schedule, and, subject to what I have there stated, I hereby confirm the said reserved findings and sentences.

D. Confirmation of reserved sentences.

Signed this day of , 19 .

G—— *H*——

General [Field] Officer in the force.

Subject to what I have stated in the last column of the schedule, I hereby confirm the [finding and] sentence of death in the case of and of penal servitude in the case of [†and in the case of the above sentences of death I am of opinion that by reason of‡ it is not practicable, having due regard to the public service, to delay the case for confirmation by any qualified officer superior to myself].

E. Confirmation of sentence of death or penal servitude.

†Omit where confirmed by officer in chief command.

Signed this day of , 19 .

J—— *K*——

General [Field] Officer in chief command of the forces.

‡State, according to the circumstances, the nature of the country, *or* the great distance, *or* the operations of the enemy.

App. II.

SCHEDULE.

Date 19 . No.

Name of alleged Offender.*	Offence charged.	Plea.	Finding, and if convicted, sentence.†	How dealt with by confirming officer.
Peter Smith (sutler)	Offence against person of inhabitant of country	Guilty	Guilty. Field punishment No. 1 for .	Confirmed. I remit . *E——F——*
262, Private James Robinson, 1st Batt. ——shire Regiment	Breaking into house in search of plunder	Not guilty	Guilty. Two months' imprisonment	Not confirmed. *E——F——*
564, Private Thomas Jones, 1st Batt. ——shire Regiment	Drunk on post	Not guilty	Guilty. Death. Recommended to mercy	Reserved [*or* Confirmed], but commuted to field punishment No. 1 for . *E——F——* *or* Confirmed, but commuted to years' penal servitude. *J——K——*
Person accompanying force (name unknown), white jacket and trousers, scar on right cheek	Impeding provost-marshal	Not guilty	Not guilty	
Soldier in uniform of —— shire Regiment (name unknown)	Offence against property of inhabitant of country	Not guilty	Guilty. Field punishment No. 2 for , and to forfeit all ordinary pay for a period of .	Reserved. *E——F——* Confirmed. *G——H——*
P——Q—— Convening Officer.		*C——D——* President.		

*If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

†Recommendation to mercy to be inserted in this column.

MEMORANDA.

The following Memoranda are intended for the guidance of courts-martial with a view to securing uniformity of practice in details not specially dealt with in the Rules of Procedure.

These Memoranda do not form part of the Appendix to the Rules of Procedure.

Application for court-martial.

If the accused has elected to be tried by a district court-martial instead of submitting to a summary award, it should be so stated on the form of application (Army Form B 116).

The name of the officer who investigated the case should be stated in the application.

In forwarding the names and dates of commissions of officers detailed for court-martial duty, the date of the Militia or Yeomanry commission should be given in the case of an officer qualified by reason of his Militia or Yeomanry service, so as to enable the Court to satisfy themselves as provided by Rule 22 (A).

Charge-sheet. The charge-sheet should be signed by the officer in actual command of the unit to which the accused belongs.

Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer to be entered. The place and date should be entered by the officer signing the orders (see p. 543).

The section of the Army Act under which each charge is framed should be entered in the margin (in red ink), opposite the charge to which it refers.

If the accused has elected to be tried instead of submitting to a summary award, it should be so stated (in red ink) at the top of the charge-sheet.

Summary of evidence. When part of the evidence is documentary, the statement of the officer made on producing the documents should be included in the summary.

A statement of evidence as to facts should commence by recording the place, date, and time (if material) to which the evidence refers.

Where the charge is for deficiency of kit, the date on which the kit of the accused was last inspected, and the date and place of finding any subsequent deficiencies, should be included in the summary of evidence.

A statement that the requirements of Rule 4 (C, D, E) have been complied with should be entered at the end of the summary of evidence and signed by the officer taking the evidence.

Proceedings. When several persons are tried successively by the same Court, the time at which each trial commences will be entered on its proceedings as the time at which the Court opens.

The full name and description of the accused should be entered on the first page of the proceedings.

Every witness, including the officer producing Army Form B 296, must be sworn in the presence of the accused to whom his evidence refers; he must not be examined on a former oath taken in the presence of another accused person.

The prosecutor or other person producing documents must be sworn.

When copies of documents are accepted it should be stated in the proceedings that they have been compared with the originals and found correct.

Articles of equipment, clothing, &c., should be entered throughout the proceedings in the same order as stated in the charge.

Where the value of arms, ammunition, equipment, or clothing is proved, or where damage is proved, the accused, if convicted, should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be discharged, in case the latter part of the sentence should be remitted.

Forms and documents. In Army Forms A 9 and B 297 there are two sets of pages, D, E, and F: one for proceedings on the plea of "Not guilty," and one for proceedings on the plea of "Guilty." When the pleas recorded are wholly "Not guilty" or wholly "Guilty," the set belonging to the pleas recorded is alone to be used.

When the pleas are partly "Not guilty" and partly "Guilty," both sets will be used, the Court proceeding first on the pleas of

"Not guilty" up to and including the finding; and then, on the plea of "Guilty," an entry being made on page D that the Court is reopened and the accused again brought before it.

The charge-sheet is to be inserted in the proceedings after sheet B; all other documents are to be attached at the end of the proceedings in the order of their production to the Court.

Every document attached to the proceedings should be signed by the president and marked with a reference letter, preferably not one used in Army Form A 9 or B 297.

In the case of a plea of "Not guilty" the summary of evidence will, as a general rule, be enclosed with the proceedings when sent to the confirming officer; and in cases where there is any material variance between the evidence of any witness in the summary and his evidence at the trial, the summary must be annexed to the proceedings when so sent.

All erasures of written or printed matter, and all corrections should be initialed by the president.

Pages should be numbered consecutively up to the end of the proceedings, after they have been put together in the order prescribed.

Sufficient space should be left below the sentence and signature of the president for the minutes of confirmation and promulgation.

The following form of promulgation should be used:—

Promulgated and extracts taken at
this day of , 19 .

Signature of the officer in charge
of documents.

THIRD APPENDIX.

FORMS OF COMMITMENT.

FORM A.

Form of Order for commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude.

App. III

A.F., C. 38

Whereas [*Name—No.—Rank*], of the regiment, was by general court-martial held at , convicted of the offence of (*a*), and, by a sentence signed on the day of 19 , sentenced (*b*) to suffer penal servitude, for years, commencing on the aforesaid day, and such sentence has been confirmed by , as required by law.*

Now, therefore, I, the undersigned, the do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined either permanently or temporarily, there to undergo his sentence according to law.

*Add, if necessary, "with a remission of years."

And I do hereby in pursuance of the above-mentioned Acts and powers order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

Signed this day of 19 .

C.D.

FORM B.

Form of Order for commitment to prison of Military Convict sentenced in India, or a Colony, or a Foreign Country, to Penal Servitude.

A.F., C. 38

Whereas [*Name—No.—Rank*], of the regiment, was by a general court-martial held at , convicted of the offence of (*a*), and by a sentence signed on the day of 19 , sentenced (*b*) to suffer penal servitude for years, commencing on the aforesaid day, and such sentence has been confirmed by , as required by law.*

Now, therefore, I, the undersigned, the do hereby in pursuance of the Army Act, and of all other Acts and powers

*Add, if necessary, "with a remission of years."

(*a*) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(*b*) Where the sentence was death, but has been commuted to penal servitude, *substitute* "to suffer death, and such sentence was confirmed by , as required by law, and was commuted to years' penal servitude, commencing on the aforesaid day."

App. III. enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And for the above purpose, I, the undersigned, do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict be removed in military custody by [*here state route*], or such other route as may be directed by proper authority, to the port at or such other port as may be directed by proper authority, thence to be removed by [*here state route*] to such prison as aforesaid in the United Kingdom.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the officer or non-commissioned officer in charge of any detention barrack, and also the governor or chief officer of any prison, military or civil, to whom the convict is brought, to receive the said convict, and detain him so long as appears reasonably necessary with the view to his said removal, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

C.D.

In case an Alteration of the Route above mentioned becomes necessary. (*a*)

Whereas for the purpose of better carrying into effect the above order for the removal of the above-mentioned convict to the United Kingdom, it is necessary to alter the route above-mentioned, I, the undersigned, the , do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict be removed in military custody by [*here state the route so far as varied*] to , thence to be removed as directed by the said order.

Signed at this day of 19 .

E.F.

In case of need the following Order may be made.

For the purpose of carrying into effect the above order, I, the undersigned, being the , do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of prison or detention barrack at , to receive the above-named convict, and to detain him until he can be removed to and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

G.H.

(*a*) This order can be repeated by any removing authority as often as necessary.

FORM C.

A.F., C. 385

Form of Order for Commitment to Prison, Military or Civil (or to a detention barrack), of persons subject to military law sentenced either in or out of the United Kingdom to Imprisonment.

To the governor or chief officer in charge of (*a*) prison (or detention barrack) at

Whereas [*Name—No.—Rank*], of the regiment, was by a (*b*) court-martial held at convicted of the offence of (*c*) , and by a sentence signed on the day of 19 , sentenced (*d*) to be imprisoned with *hard labour for , commencing on the aforesaid day, and such sentence has been confirmed by , as required by law (*e*).

Now, therefore, I, the undersigned, the

do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said person into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at this day of 19 .

G.H.

*If the sentence does not specify hard labour *alter* "with" int "without."

FORM D.

A.F., C.385.

Form of Order for commitment to a detention barrack of persons subject to military law as soldiers, sentenced either in or out of the United Kingdom to Detention.

To the commandant or chief officer in charge of the detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, was by a (*f*) court-martial held at convicted of the offence of (*c*) and, by a sentence signed on the day of 19 , sentenced (*g*) to detention for

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(*a*) *Insert* "His Majesty's," *or* as required according to title of prison.

(*b*) *Insert* "general" *or* "district" as required.

(*c*) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(*d*) *Substitute*, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by as required by law, but has been commuted into imprisonment for , with * hard labour, commencing on the aforesaid day," *or* "to suffer years' penal servitude, and such sentence has been confirmed by as required by law, and has been commuted into imprisonment for , with * hard labour, commencing on the aforesaid day."

*If the commutation does not specify hard labour *alter* "with" in "without."

(*e*) *Add*, if necessary, "with a remission of ," *or* "but has been mitigated by the omission of the hard labour," *or as the case may be.*

(*f*) *Insert* "general," "district," *or* "regimental," as required.

(*g*) *Substitute*, where the original sentence was death, penal servitude, or imprisonment, which has been commuted to detention, "to suffer death, and such sentence has been confirmed by as required by law, but has been commuted into detention for commencing on the aforesaid day," or "to suffer years' penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into detention for commencing on the aforesaid day," or "to be imprisoned with (or without) hard labour for commencing on the aforesaid day, and such sentence has been commuted into detention for commencing on the aforesaid day."

App. III

commencing on the aforesaid day, and such sentence has been confirmed by as required by law (*a*).

Now, therefore, I, the undersigned, being the do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at this day of 19 .

G.H.

FORM E.

A.F., C. 386

Form of Order respecting Imprisonment under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.

Whereas [*Name—No.—Rank*], of the regiment, was by a (*b*) court-martial held at convicted of the offence of (*c*), and by a sentence signed on the day of 19 , sentenced (*d*) to be imprisoned with *hard labour for , commencing on the aforesaid day, and such sentence has been confirmed by , as required by law (*e*).

*If the sentence does not specify hard labour, *alter* "with" into "without."

Now, therefore, I, the undersigned, the being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred and removed to prison (*or* detention barrack) at in the United Kingdom, or such other public prison or detention barrack in the United Kingdom as any other competent authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the governor or chief officer of any such prison or detention barrack as aforesaid to whom the above soldier is brought, to receive the soldier into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers, further order that the said soldier shall be conveyed in military

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(*a*) *Add*, if neeessary, "with a remission of ."

(*b*) *Insert* "general," *or* "district," as required.

(*c*) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(*d*) *Substitute*, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by as required by law, but has been commuted into imprisonment for , with *hard labour, commencing on the aforesaid day," *or* "to suffer years' penal servitude, and such sentence has been confirmed by as required by law, and has been commuted into imprisonment for , with *hard labour, commencing on the aforesaid day."

*If the commutation does not specify hard labour *alter* "with" into "without."

(*e*) *Add*, if necessary, "with a remission of ," *or* "but has been mitigated by the omission of the hard labour," *or as the case may be.*

custody and detained in military custody or in a prison, military or civil, or a detention barrack, so far as appears necessary or proper for effecting his removal to the said prison or detention barrack in the United Kingdom.

Signed at this day of 19 .

H.I.

In case of a Committal to any intermediate Prison or Detention Barrack being necessary (*a*).

For the purpose of carrying into effect the above Order, I, the undersigned, the
do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of the prison or detention barrack at , to receive the said soldier and detain him until he can be removed, in pursuance of the above order, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

I.K.

Order on arrival in United Kingdom of soldier sentenced to imprisonment.

I, the undersigned, the
being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order him to be transferred and removed to the prison or detention barrack at , to undergo his sentence according to law.

And I do hereby order the governor or chief officer of that prison or detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

K.L.

FORM F.

Form of Order respecting detention under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom. A.F.,C.386A.

Whereas [*Name—No.—Rank*], of the regiment was by a (*b*) court-martial held at convicted of the offence of (*c*) and by a sentence

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(*a*) This order may be repeated as often as necessary by any authority having power to make it.

(*b*) *Insert* "general," "district," *or* "regimental," as required.

(*c*) If there are several offences state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

App. III. signed on the day of 19 , sentenced (*a*) to detention for , commencing on the aforesaid day, and such sentence has been confirmed by as required by law (*b*).

Now, therefore, I, the undersigned, the

being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred and removed to detention barrack at in the United Kingdom or such other detention barrack in the United Kingdom as any other competent authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the commandant or chief officer of any such detention barrack as aforesaid to whom the above soldier is brought to receive the soldier into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers, further order that the said soldier shall be conveyed in military custody and detained in military custody or in a detention barrack so far as appears necessary or proper for effecting his removal to the said detention barrack in the United Kingdom.

Signed at this day of 19 .

E.F.

In case of a Committal to any intermediate Detention Barrack being necessary (*c*).

For the purpose of carrying into effect the above Order, I, the undersigned, the

do hereby, in pursuance of the Army Act and of all other Acts and powers enabling me in this behalf, order the commandant or chief officer of the detention barrack at , to receive the said soldier, and detain him until he can be removed, in pursuance of the above Order, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

D.E.

(*a*) *Substitute*, where the original sentence was death, penal servitude, or imprisonment which has been commuted to detention, "to suffer death, and such sentence has been confirmed by as required by law, but has been commuted into detention for , commencing on the aforesaid day," *or* "to suffer years' penal servitude, and such sentence has been confirmed by as required by law, and has been commuted into detention, for , commencing on the aforesaid day" *or* "to be imprisoned with (or without) hard labour for commencing on the aforesaid day, and such sentence has been confirmed by as required by law, and has been commuted into detention for commencing on the aforesaid day."

(*b*) *Add*, if necessary, "with a remission of ."

If the detention was awarded by the commanding officer, the form from "Whereas" down to "required by law" will be replaced by the corresponding provision in Form "G."

(*c*) This order may be repeated as often as necessary by any authority having power to make it.

Order on Arrival of Soldier in United Kingdom.

I, the undersigned, the being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the said soldier to be transferred and removed to the detention barrack at to undergo his sentence according to law.

And I do hereby order the commandant or chief officer of that detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

D.E.

FORM G.

Form of Commitment to Detention Barrack on award of Detention by Commanding Officer. A.F., C. 388.

To the commandant or officer or non-commissioned officer in charge of the detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, was on the day of 19 , awarded by his commanding officer detention for for the offence of .

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant.

Signed at this day of 19 .

D.E.

FORM H.

Order for Discharge of Persons subject to Military Law undergoing Imprisonment. A.F., C. 389.

To the governor, commandant, or chief officer of prison or detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody under a sentence of imprisonment by court-martial.

I, the undersigned, being do hereby order you to discharge the said soldier.

Signed at this day of 19 .

E.F.

App. III.

A.F., C.389A.

FORM I.

Order for Discharge of Persons subject to Military Law as Soldiers undergoing Detention.

To the commandant or chief officer of the detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody under a sentence of detention by court-martial.

I, the undersigned, being do hereby order you to discharge the said soldier.

Signed at this day of 19 .

E.F.

FORM J.

A.F., C. 390. *Form of Discharging Order in case of Detention under the Award of Commanding Officer.*

To the commandant or officer or non-commissioned officer in charge of the detention barrack at

You are hereby required to discharge the soldier [*Name—No.—Rank*], of the regiment, now in your custody undergoing his sentence pursuant to the award of his commanding officer.

Signed at this day of 19 .

C.D.

Commanding Officer of the above Soldier.

FORM K.

A.F., C. 391. *Order for Removal of Soldier undergoing Imprisonment to be brought before a Court.*

To the governor or chief officer of prison or detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to , there to appear before a (*a*) court-martial (*b*) as a witness, and

(*a*) If the facts so require, substitute "civil court."

(*b*) Substitute, according to the facts, "for trial," or state the other reasons for which he is to be brought.

then to return him to the above-named prison (or detention barrack), or to such other prison (or detention barrack) as may be determined by the proper authority, and to detain him in military custody until he is so returned or is discharged in due course of law, and for so doing this shall be sufficient warrant. App. III.

Signed at this day of 19 .

C.D.

If the Prison (or Detention Barrack) to which he is returned is altered.

I, the undersigned, being the do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to prison (*or* detention barrack) at , there to undergo the remainder of his sentence.

Signed at this day of 19 .

C.D.

FORM L.

Order for Removal of Soldier undergoing detention to be brought before a Court. A.F.,C.391A

To the commandant or chief officer of the detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody, undergoing a sentence of detention passed by court-martial (*a*) ;

I, the undersigned, being the , do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to , there to appear before a (*b*) court-martial (*c*) as a witness, and then to return him to the above-named detention barrack, or to such other detention barrack as may be determined by the proper authority, and to detain him in military custody until he is so returned, or is discharged in due course of law, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

C.D.

(*a*) If necessary, substitute "awarded by his commanding officer."
(*b*) If the facts so require, substitute "civil court."
(*c*) Substitute, according to the facts, "for trial," or state the other reasons for which the soldier is to be brought.

App. III.

If the Detention Barrack to which he is returned is altered.

I, the undersigned, being the
do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to the detention barrack at , there to undergo the remainder of his sentence.

Signed at this day of 19 .
C.D.

FORM M.

A.F., C. 392.

Order for Removal of Soldier undergoing Imprisonment for Embarkation.

To the governor or chief officer of prison (*or* detention barrack) at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the
, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the regiment to which he belongs is serving (*a*), and for so doing this shall be sufficient warrant.

Signed at this day of 19 .
J.K.

FORM N.

A.F., C. 392A

Order for Removal of Soldier undergoing Detention for Embarkation.

To the commandant or chief officer of the detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of detention passed by court-martial (*b*).

I, the undersigned, being the
do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

(*a*) If necessary, substitute "under orders to serve."
(*b*) If necessary, substitute "awarded by his commanding officer."

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to , where the regiment to which he belongs is serving (*a*), and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

J.K.

FORM O.

Order for Removal of Soldier from one public Prison (or Detention Barrack) to another. A.F., C. 393.

To the governor or chief officer of prison (*or* detention barrack) at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and convey him in military custody in such manner as may be directed by military authority, to the prison (*or* detention barrack) at , there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

D.E.

FORM P.

Order for Removal of a person subject to Military Law as a Soldier undergoing Detention from one Detention Barrack to another. A.F., C. 393A

To the commandant or chief officer of the detention barrack at .

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of detention passed by court-martial (*b*);

I, the undersigned, being the , do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

(*a*) If necessary, substitute "under orders to serve."

(*b*) If necessary, substitute "awarded by his commanding officer."

App. III. And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody, and convey him in military custody in such manner as may be directed by military authority, to the detention barrack at , there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .

D.E.

FORM Q (*a*).

A.F., C. 396 *Form of order for temporary custody in Prison or Lock-up.*

To the governor or chief officer of prison at (*b*)

Whereas [*Name—No.—Rank*], of the regiment, is now a soldier in military custody.

Now therefore I, the undersigned, the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody and detain him until you receive a further order from me, but not longer than seven days, and for so doing this shall be your warrant.

Signed this day of 19 .

J.K.

FORM R.

A.F., B. 72. *Form of Commitment to Detention Barrack for safe custody while awaiting Trial by, or Sentence of, Court-Martial.*

To the officer or non-commissioned officer in charge of the detention barrack at .

Whereas [*Name—No.—Rank*], of the regiment [has been remanded for trial by court-martial] (*c*) *or* [was on the day of 19 , tried by court-martial for the offence of], and is awaiting [trial] (*c*) *or* [the promulgation of the finding and sentence of the court].

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby, in pursuance of the King's Regulations and Orders for the Army enabling me in this behalf, order you to receive him into your custody for safe custody, and for so doing this shall be your warrant.

(*a*) This form can be used only in the case of a soldier as defined by the Army Act.

(*b*) Substitute, if necessary, "officer in charge of the police station [*or other place*] at ."

(*c*) NOTE.—The forms should be altered to meet the cases of confinement before and after the trial respectively by erasing the words not applicable.

App. III.

You will take care that the said soldier wears his regimental clothing and necessaries, that he is allowed to exercise during a reasonable portion of each day in association, if possible, but that he is kept apart from soldiers undergoing sentences, and that he receives the ordinary rations and messing of a soldier. He should not be *obliged* to labour otherwise than by being employed in drill fatigue and other duties similar in kind and amount to those he might be called on to perform if not in confinement.

Signed at this day of 19

(*Signature*)

FORM S.

Form of Discharging Order in case of Confinement in Detention Barrack for safe Custody while awaiting Trial by, or Sentence of, Court-Martial. A.F., B. 94.

To the officer or non-commissioned officer in charge of the detention barrack at

You are hereby required to deliver over the soldier [*Name—No.—Rank*], of the regiment, now in your custody for safe custody, pursuant to committal by his commanding officer, to the non-commissioned officer of the escort herewith attending to receive him.

Signed at this day of 19 .

(*Signature*)

Commanding Officer of the above Soldier.

FORM T.

Order for the Removal in Military Custody of a Deserter or Absentee without leave awaiting Escort. A.F., O. 1797.

To the governor or chief officer of prison.

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody as a deserter or absentee without leave awaiting escort, I, the undersigned, being do hereby order you to deliver the said prisoner to the escort producing this authority.

Signed at this day of 19 .

D.E.

FORM U.

Form of Commitment of Person guilty of Contempt of a Court-Martial under s. 28.

To the officer or non-commissioned officer in charge of the prison [*or* detention barrack] at

Whereas a court-martial for the trial of , of which I, the undersigned, am president, was on this day sitting at and of the Battalion, Regiment, was guilty of contempt of the court by using insulting language [*or* by using threatening language], [*or* by causing an interruption in the proceedings of such court, *or as the case may be*], namely by [*here describe the act of which the offender was guilty*].

And whereas the said court did order the above-named offender to be imprisoned [*or* to undergo detention] for days.

Now, therefore, the court doth order you to receive the said offender into your custody for safe custody, and for so doing this shall be your warrant.

Signed at this day of 19 .

(*Signature*)

A.B., President of the above Court-Martial.

Rules for Field Punishment.

RULES FOR FIELD PUNISHMENT MADE UNDER S. 44, OF THE ARMY ACT.

F. P. Rules.

1. A court-martial, or a commanding officer, may award field punishment for any offence committed on active service, and may sentence an offender for a period not exceeding, in the case of a court-martial three months, and in the case of a commanding officer twenty-eight days, to one of the following field punishments, namely :—

(*a*) Field punishment No. 1.

(*b*) Field punishment No. 2.

2. Where an offender is sentenced to field punishment No. 1, he may, during the continuance of his sentence, unless the court-martial or the commanding officer otherwise directs, be punished as follows :—

(*a*) He may be kept in irons, *i.e.*, in fetters or handcuffs, or both fetters and handcuffs ; and may be secured so as to prevent his escape.

(*b*) When in irons he may be attached for a period or periods not exceeding two hours in any one day to a fixed object, but he must not be so attached during more than three out of any four consecutive days, nor during more than twenty-one days in all.

(*c*) Straps or ropes may be used for the purpose of these rules in lieu of irons.

(*d*) He may be subjected to the like labour, employment, and restraint, and dealt with in like manner as if he were under a sentence of imprisonment with hard labour.

3. Where an offender is sentenced to field punishment No. 2, the foregoing rule with respect to field punishment No. 1 shall apply to him, except that he shall not be liable to be attached to a fixed object as provided by paragraph (*b*) of Rule 2.

4. Every portion of a field punishment shall be inflicted in such a manner as is calculated not to cause injury or to leave any permanent mark on the offender ; and a portion of a field punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender's health.

5. Field punishment will be carried out regimentally when the unit to which the offender belongs or is attached is actually on the move, but when the unit is halted at any place where there is a provost marshal, or an assistant provost marshal, the punishment will be carried out under that officer.

6. When the unit to which the offender belongs or is attached is actually on the move, an offender awarded field punishment No. 1 shall be exempt from the operation of Rule (2) (*b*), but all offenders awarded field punishment shall march with their unit, carry their arms and accoutrements, perform all their military duties as well as extra fatigue duties, and be treated as defaulters.

(Signed) R. B. HALDANE.

29*th June*, 1907.

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further rules are made in pursuance of Section 44 of the said Act.

(Signed) TWEEDMOUTH.
J. A. FISHER.

Admiralty,
9*th July*, 1907.

Forms of Court Martial Warrants.

Warrants.

The following Forms are at present in use :—

I.—*Form of Warrant under the Sign-Manual empowering General Officers in command at home to convene General Courts Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any persons subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against Military Discipline, whether such offence shall have been committed before or after you shall have taken upon yourself your Command. The said Courts-Martial shall be constituted, and shall proceed in the trial of the offenders, and in giving sentence and awarding punishment, according to the powers and directions contained in the said Act.

Warrants.

We are further pleased to order that the proceedings of every such Court-Martial shall be transmitted to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War who will lay the same before Us for Our decision thereupon.

And for so doing, this shall be, to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at this
day of
in the Year of Our Reign.

By His Majesty's Command.

(*Signature of Secretary of State.*)

To

The General
or Officer Commanding the Forces (*Home*).

II.—*Form of Warrant under the Sign-Manual enabling Commander-in-Chief in India to convene and confirm the findings and sentences of General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your command, who shall be charged with any offence against the provisions of the said Act; and We hereby further authorise you to confirm the proceedings of any courts-martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act.

And We do hereby further authorise you to direct your warrant to any Officer under your command, not under the rank of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial, under the said Act, of any such persons subject to Military Law as are for the time being under or within the territorial limits of his command, whether the offences shall have been committed before or after such Officer shall have taken upon him his command, and also to exercise in respect of the proceedings of such courts-martial the power of confirming the findings or sentences thereof in accordance with the said Act; or if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such courts-martial, in which case you are hereby authorised to exercise, in respect of the proceedings so reserved, all the powers of a confirming Officer in accordance with the said Act.

We also hereby authorise you in any case in which you shall think fit so to do, to transmit the proceedings of any General Court-Martial to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War who will lay the same before Us for Our decision thereupon.

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial,

the power of appointing a fit person from time to time for executing the office of Judge-Advocate at any Court-Martial for the more orderly proceedings of the same. Warrants.

And for enforcing the sentence of every such Court-Martial, We do also give you authority to appoint and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act.

And for executing the several powers, matters, and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at this
day of 19
in the Year of Our Reign.
By His Majesty's Command.
(*Signature of Secretary of State.*)

To

The General or Officer for the time being
Commanding in Chief
The Forces in the East Indies.

NOTE.—The warrant for the Commander-in-Chief on active service often follows the above Form.

III.—*Form of Warrant under the Sign-Manual enabling General Officer Commanding the Forces in a Colony, or elsewhere out of the United Kingdom, except in India, to convene and confirm the finding and sentences of General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against the said Act, whether such offence shall have been committed before or after you shall have taken upon yourself the Command; and We hereby further authorise you to confirm the proceedings of any such Courts-Martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act.

And We do hereby further authorise you to direct your Warrant to any Officer under your command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial, for the trial, under the said Act, of any such persons subject to Military Law as are for the time being under or within the territorial limits of his Command, whether the offences shall have been committed before or after such Officer shall have taken upon him his Command, and also to exercise, in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act; or, if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such Courts-Martial, in which case you are hereby authorised to exercise, in respect of the proceedings so reserved, all the powers of a confirming Officer in accordance with the said Act.

Provided always, that if by the sentence of any General Court-Martial a Commissioned Officer, other than a native Commissioned Officer, has been sentenced to suffer Death, or Penal Servitude, or to be Cashiered or dismissed from Our Service, you shall in such case,

Warrants. as also in the case of any other General Court-Martial in which you shall think fit so to do, transmit the proceedings to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us, for Our decision thereupon.

Provided also that if by the sentence of any General Court-Martial a native Commissioned Officer has been sentenced to suffer Death or Penal Servitude or to be Cashiered or dismissed from Our Service, you shall in such case require the proceedings to be reserved for your confirmation, or, if you shall so think fit, for transmission to the Judge-Advocate General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us for Our decision thereupon.

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a fit person from time to time for executing the office of Judge-Advocate of any Court-Martial for the more orderly proceedings of the same.

And for enforcing the sentence of any such Court-Martial, We do also give you authority to appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act.

And for executing the several powers, matters, and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at this
day of 19
in the Year of Our Reign.

By His Majesty's Command,
(*Signature of Secretary of State.*)

To

The General or Officer for the time being
Commanding the Forces at .

IV.—*Form of Warrant by Officer holding one of foregoing Warrants delegating to an Officer power to convene* [*and confirm*] *General Courts-Martial.*

Army Form A. 1.

To

Whereas I am empowered by Warrant of His Majesty to direct my warrant to any Officer under my command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial under the Army Act, of any person under the command of such last-mentioned officer who is subject to Military Law, and also to execute (subject to the provisions of the said Warrant) in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act, or of directing him to reserve for my confirmation the proceedings of all or any such Courts-Martial.

By virtue of the said Warrant, I do hereby authorise and empower you *[or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer] from time to time, as occasion may require, to convene General Courts-Martial for the trial, in accordance with the said Act and the rules made thereunder, of any person under your command who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a General Court-Martial. Warrants.

† And I do hereby empower you *[or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer] to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act of Parliament in the confirming Officer, in such manner as may be best for the good of His Majesty's Service.

† Provided always that if by the sentence of any General Court-Martial a Commissioned Officer has been sentenced to suffer Death, Penal Servitude, or to be cashiered or dismissed from the Service, you shall in such case, as also in the case of any other General Court-Martial in which you shall think fit so to do, withhold confirmation and transmit the proceedings to me.

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, I hereby further empower you, in default of a person appointed by His Majesty, or deputed by the Judge-Advocate-General of His Majesty's Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint a fit person from time to time for executing the office of Judge-Advocate of any Court-Martial for the more orderly proceedings of the same.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand and seal at
this day of

Signature of
General Officer }

By Command
Signature of
Staff Officer }

V.—*Form of Warrant by Officer holding one of foregoing Warrants delegating to an Officer power to convene District Courts-Martial.*

Army Form A. 5.

To

Whereas I am empowered by Warrant to convene General Courts-Martial, and whereas under the Army Act, any Officer or person authorised to convene General Courts-Martial may empower any person under his command not below the rank of Captain, to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Military Law.

By virtue of the said Act and Warrant, I do hereby authorise and empower you ‡[or the Officer on whom your command may

* May be omitted.
† This clause to be omitted if the power of confirmation is wholly reserved.
‡ May be omitted or varied in accordance with the terms of the Army Act, s. 123.

devolve during your absence, not under the rank of] from time to time as occasion may require, to convene District Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command, who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

*This clause to be omitted if the power of confirmation is wholly reserved.

†May be omitted or varied in accordance with the terms of the Army Act, s. 123.

* And I do hereby empower you †[or the Officer on whom your command may devolve during your absence, not under the rank of] to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act of Parliament in the confirming Officer, in such manner as may be best for the good of His Majesty's Service.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand and seal at
this day of

Signature of General Officer }

By Command.
Signature of Staff Officer }

Army Form B. 116.

Form of Application for a Court-Martial.

Army Form B. 116
Regiment.

Station Date 19

Application for a Court-Martial.

SIR,

I have the honour to submit Charge against No. of the under my command, and request you will obtain the sanction of that a Court-Martial may be assembled for his trial at

The case was investigated by**

A Court of Inquiry was held on the day of 19 at [*insert name of station*].††

The accused is now at . His General Character is‡

I beg to enclose the following documents :—

1. § Charge sheet (in duplicate).
2. ‖ Summary of Evidence.
3. ¶ The regimental and [troop, squadron, battery, or company] conduct sheets of the accused.
4. ¶ List of Witnesses for the prosecution, and defence (with their present stations).

** Here insert name of (*a*) officer who investigated charge, (*b*) company, &c., commander who made preliminary inquiry into case, and (*c*) officer who took down summary of evidence. (R.P. 19 (B) (iii).)

†† To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges, otherwise to be struck out.

‡ To be filled in by the Commanding Officer.

§ One copy to be sent to the president; one copy to be filled with the application for trial. In cases of desertion, a statement as to whether the accused was apprehended or surrendered, should be included in the summary of evidence.

‖ To be sent to the president.

¶ (3), (4), and (5) To be returned to the officer commanding the unit of the accused with the notice of trial.

5. * Statement as to character, and particulars of service of the accused (Army Form B. 296) to be proved by

I have the honour to be,
SIR,
Your most obedient humble Servant,
Signature of Commanding Officer.

To

* (3), (4), and (5) To be returned to the officer commanding the unit of the accused with the notice of trial.

MEDICAL OFFICER'S CERTIFICATE.

I certify that No. Regiment is in a state of health and to undergo Imprisonment, and with or without hard labour; and that his present appearance and previous medical history both justify the belief, that hard labour employment will neither be likely to originate nor to reproduce disease of any description.

Signature of the Medical Officer.

Order in Council respecting Discipline on board H.M.'s Ships.

Order in Council.

At the Court at Osborne House, Isle of Wight, the 6th day of February, 1882.

PRESENT:

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 3rd of February, 1882, in the words following, viz.:—

"WHEREAS by the 88th section of an Act passed in the 29th and 30th years of Your Majesty's reign, chapter 109, entitled An Act to make Provision for the Discipline of the Navy, it is enacted that Your Majesty's land forces, when embarked on board any of Your Majesty's ships, shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct;

"And whereas under Articles 1172, 1173, and 1174 of the Regulations for the Government of Your Majesty's Naval Service, established under Your Majesty's Order in Council dated the 4th day of February, 1879, certain rules were laid down for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's ships;

"And whereas we, having had the said rules under our careful consideration, are humbly of opinion that it would be for the advantage of Your Majesty's Service that the said rules should be amended, we therefore beg leave to recommend that Your Majesty will be graciously pleased by Your Order in Council to direct that the said rules shall be cancelled, and that the following Regulations shall be established in lieu thereof:—

"1. Whenever any of Your Majesty's land forces shall be embarked as passengers in any of Your Majesty's ships, the officers

Order in Council.

and soldiers shall, from the time of embarkation, strictly observe the laws and regulations established for the government and discipline of Your Majesty's Navy, and shall, for these purposes, be under the command of the commanding officer of the ship, as well as of the senior naval officer present; and all military officers or other persons under the equivalent rank of Captain of Your Majesty's Navy taking passages, and all military officers in actual command for the time being of any of the troops embarked, through whom orders to the troops (given by the officer of the watch) are required to pass, shall be under the command of the officer of the watch.

"2. Any act against the good order and discipline of the ship shall be deemed an act to the prejudice of good order and military discipline under the 40th section of the Army Act, 1881, unless the breach of discipline constitutes some other military offence for which provision is otherwise made in the said Act.

"3. Whenever an officer or soldier commits any act against the good order and discipline of the ship, the commanding officer of the ship may, by his own authority, and without reference to any other person, cause him to be put under arrest or confined as a close prisoner; and may, if he thinks the case requires it, order the prisoner to be disembarked at the first convenient opportunity, transmitting a report in writing, through the senior naval officer present, to the senior military officer in command of the land forces, in order that the offender may be brought before a military court-martial.

"4. The commanding officer of the ship shall have full power, on his own authority to order an offender, whether officer or soldier, to be placed in either naval or military custody, as he shall consider most desirable, observing that in all cases where an offender is to be disembarked for trial by military authority, he must be placed in military custody on board the ship.

"5. If any officer or soldier commits any act which, in the opinion of the commanding officer of the troops, can only be adequately dealt with by a general or district court-martial, the offender shall, with the concurrence of the commanding officer of the ship, be disembarked on the first opportunity for the purpose of being proceeded against according to military law.

"6. If any private soldier shall commit any act against the good order and discipline of the ship, which in the opinion of the commanding officer of the ship requires the infliction of any summary punishment for which a warrant is required by the Summary Punishment Table attached hereto, and which he is hereby authorised to award, the commanding officer of the ship shall confer with the commanding officer of the troops as to the nature and amount of such punishment, if any, to be inflicted, and on their concurrence the commanding officer of the ship shall, by warrant under his hand, which should also bear the signature of the officer commanding the troops as concurring, sentence the offender to suffer such punishment accordingly. In the event of the commanding officer of the troops not concurring with the commanding officer of the ship, the commanding officer of the ship is to cause the offender to be placed under arrest or confined as a close prisoner, until the case can be referred to superior military authority.

"7. If any non-commissioned officer shall commit an offence which, in the opinion of the commanding officer of the ship and the officer commanding the troops, does not require trial by general or district court-martial, the commanding officer of the ship may, by

an order in writing, authorise the officer commanding the troops to convene a regimental court-martial for the trial of such non-commissioned officer, and thereupon the trial may proceed, and the finding and sentence may be confirmed in all respects as if the court had been convened and the sentence had been passed in the United Kingdom. Order in Council.

"Provided that no sentence of any such regimental court-martial shall be carried into execution on board any of Your Majesty's ships until the commanding officer of the ship has, by an order in writing, expressed his concurrence in the said sentence, and directed that it may be carried into effect.

"If the commanding officer of the ship shall see fit to withhold the last-named order in writing, the confirming officer shall suspend the execution of the sentence until the disembarkation of the prisoner.

"Whenever such regimental court-martial is held on board, the captain of the ship is to report immediately by special letter on each case to the Admiralty, a copy of which letter shall accompany the quarterly returns of punishment.

"8. The commanding officer of the troops, on his taking command of the troops embarked, will receive from the captain of the ship authority under his hand, and in the established form, to award such summary punishments as are specified in the Summary Punishment Table for the military, but such authority will not deprive the captain of his right to withdraw the original authority given; in the latter case, however, he should report to the Admiralty the circumstances which induced him to deviate from the general rule.

"9. All orders to the troops are, so far as may be practicable, to be given through their own officers and non-commissioned officers, and the commanding officer of the ship is to bear in mind that although the discipline of all on board is under his entire control, he is nevertheless to leave the troops to the management of their own officers, so far as may be consistent with the order and discipline of the ship.

"10. In special and exceptional cases, where the commanding officer of the ship may deem it necessary for the good order or discipline of the ship to give such orders as may interfere with existing regulations, or may affect the internal economy and discipline of the troops embarked, he is to make a special report of the circumstances to the Admiralty.

"11. When any soldiers of Your Majesty's land forces are embarked as passengers in any of Your Majesty's ships, and there is no commissioned officer of the land forces on board, the commanding officer of the ship shall possess and may exercise in regard to any such soldiers all the powers conferred upon him by Article 6 in the case of private soldiers without conferring with or obtaining the concurrence or signature of any officer of Your Majesty's land forces.

"12. All summary punishments for soldiers embarked on board Your Majesty's ships shall be in strict accordance with the Summary Punishment Table appended to this Order in Council.

"13. Military convicts and military prisoners when embarked on board Your Majesty's ships for passage shall be kept in military custody.

"Your Majesty's Secretary of State for War and his Royal Highness the Field Marshal Commanding-in-Chief have signified to us their concurrence in these proposals."

SUMMARY PUNISHMENT TABLE.*

"DESCRIPTION of SUMMARY PUNISHMENTS to be awarded to PRIVATE SOLDIERS when embarked in HER MAJESTY'S SHIPS.

Number of Troop Punishments.	Authorised Summary Punishments for Private Soldiers.	By whom to be Awarded.	If Warrant required.	Military Equivalent.	Remarks.
1.	Imprisonment, with or without hard labour (not to exceed 42 days).	Captain	Yes	Imprisonment with or without Hard Labour.	The offender loses a Badge for any imprisonment.
2.	Confinement in a Cell (not to exceed 14 days)...	Captain	Yes	Day for Day	
3.	Stoppages in conformity with the Army Act, 1881, s. 138 (3) and (4).	Captain	Yes	Conviction by Court-Martial.	Loss of a Badge.
Minor Summary Punishments. 4.	Stoppage of smoking. Eating meals under sentry's charge. Half an hour to dinner. Not exceeding three hours Pack Drill, if weather permits; if not, to Parade without Packs. To stand for two hours on deck from 6 to 8 p.m. Answer Roll Call every Bell between Morning Parade and 6 p.m.... ... ... — 14 days	Officer commanding the Troops	No	Confinement to Barracks Day for Day.	If confined for more than 7 days he loses a Badge.
5.	Stoppage of smoking. Answer Roll Call every Bell from Morning Parade till 6 p.m. — 7 days	Ditto	No	Company Entry	— —
6.	Stoppage of smoking not to exceed 28 days. Answer Roll Call four times daily.	Ditto	No	Regimental Entry, if exceeding 7 days; otherwise Company Entry.	If exceeding 7 days entails loss of Badge.
7.	Fines for Drunkenness, as provided for in Queen's Regulations and Orders for the Army.	Ditto	No	Company or Regimental Entry as the case may be.	— —
8.	Extra Guards for Slackness, Inattention on Guard, as in Queen's Regulations and Orders for the Army.	Ditto	No	Company Entry.	— —

Note.—A Private Soldier may be admonished, and a Non-Commissioned Officer reprimanded by the Officer Commanding the Troops."

* This Table is printed with the amendments consequent on the abolition of a liquor ration to soldiers on board ship, made by Order in Council, 30th June, 1890.

SUMMARY PUNISHMENT TABLE.

"DESCRIPTION of PUNISHMENT to be awarded to NON-COMMISSIONED OFFICERS when embarked in Her MAJESTY'S SHIPS.

Authorised Punishments for Non-Commissioned Officers.	By whom to be awarded.	Authority required.	Military Effect.	Remarks.
Reduction Fines and Stoppages	Regimental Court-Martial.	Captain's concurrence by order in writing.	Regimental Court-Martial Conviction.	Whenever a Regimental Court-Martial is authorised to be held, the Court will sit on some convenient place on the Main Deck screened off for the purpose, or other convenient place."

HER MAJESTY, having taken the said memorial into consideration, was pleased, by and with the advice of Her Privy Council, to approve of what is therein proposed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

C. L. PEEL.

PART III.

MISCELLANEOUS ENACTMENTS, REGULATIONS AND FORMS.

Extract from the Petition of Right, 3 Chas. I, c. 1 (1627).

"To the Kings most excellent Majestie.

"Humbly shew unto our soveraigne lord the King the lords spirituall and temporall and comons in Parliament assembled, that . . . .

"Whereas alsoe by authoritie of Parliament in the five and twentith year of the raigne of King Edward the Third it is declared and enacted that no man should be forejudged of life or limbe against the forme of the Great Charter and the lawe of the land, and by the said Great Charter, and other the lawes and statutes of this your realme no man ought to be adjuged to death but by the lawes established in this your realme, either by the customes of the said realme or by Acts of Parliament. And whereas no offendor of what kinde soever is exempted from the p'ceedings to be used and punishments to be inflicted by the lawes and statutes of this your realme, neverthelesse of late tyme divers comissions under your Majesties greate seale have issued forth, by which certaine p'sons have been assigned and appointed comissioners with power and authoritie to p'ceed within the land according to the justice of martiall lawe against such souldiers or marriners or other dissolute p'sons joyning with them as should comitt any murther robbery felony mutiny or other outrage or misdemeanor whatsoever, and by such sumary course and order as is agreeable to martiall lawe and as is used in armies in tyme of war to p'ceed to the tryall and condemnacion of such offenders, and them to cause to be executed and putt to death according to the lawe martiall.

"By p'text whereof some of your Majesties subjects have been by some of the said comissioners put to death, when and where, if by the lawes and statutes of the land they had deserved death, by the same lawes and statutes alsoe they might and by no other ought to have byn judged and executed.

"And alsoe sundrie greivous offendors by colour thereof clayming an exempcion have escaped the punishments due to them by the lawes and statutes of this your realme, by reason that divers of your officers and ministers of justice have unjustlie refused or forborne to p'ceed against such offendors according to the same lawes and statutes upon p'tence that the said offendors were punishable onelie by martiall law and by authoritie of such comissions as aforesaid. Which comissions and all other of like nature are wholly and directlie contrary to the said lawes and statutes of this your realme.

"They doe therefore humblie pray your most excellent Majestie . . . . . that the aforesaid comissions for p'ceeding by martiall lawe may be revoked and annulled. And that hereafter no comissions of like nature may issue forth to any p'son or p'sons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesties subjects be destroyed or put to death contrary to the lawes and franchise of the land."

The Railway Regulation Act, 1842.

[5 & 6 Vict. c. 55.]

Extract from

An Act for the better Regulation of Railways, and for the Conveyance of Troops. [30th July, 1842.]

Railway companies shall convey military and police forces at prices to be settled.

20. Whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, militia, or the police force by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities. (*a*)

The Railway Regulation Act, 1844.

[7 & 8 Vict. c. 85.]

Extract from

An Act to attach certain Conditions to the Construction of future Railways authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament; and for other purposes in relation to Railways. [9th August, 1844.]

Certain companies to convey military and police forces at certain charges. 5 and 6 Vict. c. 55.

12. And whereas by the Railway Regulation Act, 1842, it was, among other things, enacted that, whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities: And whereas it is expedient to

(*a*) This section is repealed except as to Ireland, and except as respecting the conveyance of forces by companies which lose the benefit of the Cheap Trains Act, 1883. (46 & 47 Vict. c. 34.) See s. 6 of that Act below.

amend such provision in regard to the prices and conditions of conveyance by any new railway or any railway obtaining new powers from Parliament: Be it enacted, that all railway companies which have been or shall be incorporated by any Act of the present or any future session, or which by any Act of the present or any future session shall have obtained or shall obtain any extension or amendment of the powers conferred by their previous Acts or any of them, or have been or shall be authorised to do any act unauthorised by the provisions of such previous Acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding twopence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow or child above twelve years of age of a soldier entitled by Act of Parliament or by competent authority to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines, and privates of the militia or police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided that every officer conveyed shall be entitled to take with him one hundredweight of personal luggage without extra charge, and every soldier, marine, private, wife, or widow shall be entitled to take with him or her half a hundred-weight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition, and other necessaries and things (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the Secretary at War and the Company), shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods. (*a*)

Cheap Trains Act, 1883.

[46 & 47 Vict., c. 34.]

Extract from

An Act to amend the Law relating to Railway Passenger Duty, and to amend and consolidate the Law relating to the conveyance of the Queen's Forces by Railway. [20th August, 1883.]

Conveyance of the Queen's

6. (1) For the purposes of moving by railway on any occasion of the public service—

(*a*) This section is repealed, except as to Ireland, and except as respecting the conveyance of forces by companies which lose the benefit of the Cheap Trains Act, 1883. (46 and 47 Vict. c. 34.) See s. 6 of that Act below.

forces at reduced rates.

(*a*) any of the officers or men in or belonging to Her Majesty's navy, or royal naval volunteers, and any other officers or men under the command or government of the Admiralty; and

44 and 45 Vict. c. 58.

(*b*) any of the officers or soldiers in Her Majesty's regular reserve or auxiliary forces (within the meaning of the Army Act, 1881, or any Act amending the same) for the time being subject to military law; and

(*c*) any officers or men of any police force;

(all and any of which officers, soldiers, and men are in this Act called the "forces");

every railway company shall, on the production of a route duly signed for the conveyance of the forces, provide conveyance for them and their personal luggage, and also for any public baggage, stores, arms, ammunition, and other necessaries and things, whether actually accompanying the forces or not, at all usual times at which passengers are conveyed by the company, on such terms as may be agreed on between the railway company and the Secretary of State, Admiralty, or police authorit , and subject to or in default of agreement on the following terms:

(i.) The passenger carriages provided shall be of such classes in use on the railway, and in such proportions, as specified in the route, all carriages being protected from the weather and having proper accommodation:

(ii.) The fares shall not exceed the following proportions of the fares charged to private passengers for the single journey by ordinary train in the respective classes of carriages specified in the route, that is to say, if the number of persons conveyed is less than one hundred and fifty, three-fourths; and if the number is one hundred and fifty or more, then for the first one hundred and fifty, three-fourths, as for four officers and one hundred and forty-six soldiers or other persons; and for the numbers in excess of the said one hundred and fifty, one half:

(iii.) This section shall apply to such wives, widows, and children of members of the forces as are entitled to be conveyed at the public expense, in like manner as if they were part of the forces, but children less than three years old shall be conveyed free of charge, and the fare for a child more than three and less than twelve years old shall be half the fare payable under this section for an adult:

(iv.) One hundredweight of personal luggage shall be conveyed by the railway company free of charge for every one conveyed under this section, who is required by the route to be conveyed first-class, and half a hundredweight for every other person conveyed; and any excess of weight shall be conveyed at not more than two-thirds of the rate charged to the public for excess luggage:

(v.) The said public baggage, stores, arms, ammunition, necessaries, and things shall be carried at rates not exceeding twopence per ton per mile, the assistance of the forces to be given when available in loading and unloading the same:

(vi.) Provided that the company shall not be bound under this section to carry gunpowder or other explosive or combustible matters except on terms agreed upon between the company and the Admiralty or one of Her Majesty's Principal Secretaries of State, as the case may be.

(2.) For the purposes of this section a route duly signed shall be deemed to be a route issued and signed in accordance with section one hundred and three of the Army Act, 1881, or an order signed by a person authorised in this behalf by one of Her Majesty's Principal Secretaries of State, or a route or order signed by a person authorised in this behalf by the Admiralty, or, as regards the police, a route or order signed by a person authorised in this behalf by the police authority.

(3.) Fares payable under this section shall be exempt from passenger duty.

(4.) Where a company has by refusal or neglect to comply with an order of the Board of Trade or the Railway Commissioners lost the benefit of this Act, that company shall, until its compliance is certified as in this Act provided, be exempt from the provisions of this section, but shall be bound to convey all such persons and things as mentioned in this section on the same terms as if this Act had not been passed.

. . . . . .

11. This Act shall not extend to Ireland (*a*).

The Regulation of the Forces Act, 1871. (*b*)

[34 & 35 Vict., c. 86.]

An Act for the better Regulation of the Regular and Auxiliary Land Forces of the Crown; and for other purposes relating thereto. [17th August, 1871.]

Preliminary.

1. This Act may be cited for all purposes as "The Regulation of the Forces Act, 1871. Short title.

PART II.—Auxiliary Forces.

6. After a day to be named by order of Her Majesty in Council, all jurisdiction, powers, duties, command, and privileges over, of, or in relation to the * * yeomanry and volunteers of England, Scotland, and Ireland, or any of such forces, or any part thereof, vested in or exercisable by the lieutenants of counties, or by the Lord Lieutenant of Ireland, either of his own motion or with the advice of the Privy Council in Ireland, shall revert to Her Majesty, and shall be exercisable by Her Majesty, through Her Secretary of State, or any officers to whom Her Majesty may, by and with the advice of Her said Secretary of State, delegate such jurisdiction, powers, duties, command, and privileges, or any of them, or any part thereof; * * * and after the day named as last aforesaid all officers in the * * yeomanry and volunteers of England, Scotland, and Ireland shall hold commissions from Her Majesty, and such commissions shall be prepared, authenticated, and issued in the manner in which commissions of officers in Her Majesty's land forces are prepared, authenticated, and issued according to any

Jurisdiction of lieutenants of counties in respect of auxiliary forces revested in Her Majesty.

(*a*) As to Ireland, see the Railway Regulation Acts, 1842 and 1844, *supra* pp. 614, 615..

(*b*) Parts of this Act still in force have been omitted, as unnecessary for general reference. The parts repealed by the Reserve Forces Act, 1882, and the Militia Act, 1882, are omitted.

law or custom for the time being in force, and all commissions held on the appointed day by officers in the * * yeomanry and volunteers shall be deemed to have been so issued.

Commissions or first appointments to the rank of cornet, ensign, or lieutenant in any regiment or corps of * * * yeomanry or volunteers shall be given to persons recommended by the lieutenants of the county to which such regiment or corps belongs, if a person approved by Her Majesty is recommended for any such commission or appointment by such lieutenant within thirty days after notice of a vacancy for such commission or appointment has been given to such lieutenant by the said Secretary of State by letter addressed to him by post.

PART IV.—Miscellaneous and Definitions.

Power of Government on occasion of emergency to take possession of railroads.

16. When Her Majesty, by Order in Council, declares that an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State may by warrant under his hand empower any person or persons named in such warrant to take possession in the name or on behalf of Her Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for Her Majesty's service at such times and in such manner as the Secretary of State may direct; and the directors, officers, and servants of any such railroad shall obey the directions of the Secretary of State as to the user of such railroad or plant as aforesaid for Her Majesty's service.

Any warrant granted by the said Secretary of State in pursuance of this section shall remain in force for one week only, but may be renewed from week to week so long as, in the opinion of the said Secretary of State, the emergency continues.

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury they may have sustained by the exercise of the powers of the Secretary of State under this section as may be agreed upon between the said Secretary of State and the said person or body of persons, or, in case of difference, may be settled by arbitration in manner provided by "The Lands Clauses Consolidation Act, 1845."

Where any railroad or plant is taken possession of in the name or on behalf of Her Majesty in pursuance of this section, all contracts and engagements between the person or body of persons whose railroad is so taken possession of and the directors, officers, and servants of such persons or body of persons, or between such person or body of persons and any other persons in relation to the working or maintenance of the railroad, or in relation to the supply or working of the plant of such railroad, which would, if such possession had not been taken, have been enforceable by or against the said person or body of persons, shall during the continuance of such possession be enforceable by or against Her Majesty.

For the purposes of this section "railroad" shall include any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other, and any stations, works, or

accommodation belonging to or required for the working of such railroad or tramway.

"Plant" shall include any engines, rolling stock, horses, or other animal or mechanical power, and all things necessary for the proper working of a railroad or tramway which are not included in the word "railroad."

Definitions.

Interpretation of certain terms in the Act.

19. In this Act if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say:—

. . . . . .

"Lieutenant of a County" includes a Vice-Lieutenant, also the Commissioners of Lieutenancy of the City of London, the Governor of the Isle of Wight, the Warden of the Cinque Ports, the Warden of the Stannaries, the Constable of the Tower, and any other officer, or officers, however named having a jurisdiction in relation to the General or Local Militia similar to that of Lieutenant or Lieutenants or Deputy Lieutenants of a county:

. . . . . .

"Officer" means "commissioned officer."

National Defence Act, 1888.

[51 & 52 Vict., c. 31.]

Extract from

An Act to make better provision respecting National Defence.

[13th August, 1888.]

Power of Government, on occasion of national danger, or great emergency, to have precedence in traffic of railway.

4.—(1.) Whenever an order for the embodiment of the Militia is in force, it shall be lawful for Her Majesty the Queen, by order signified under the hand of a Secretary of State, to declare that it is expedient for the public service that traffic for naval and military purposes shall have on the railways in the United Kingdom, or such of them as is mentioned in the order, precedence over other traffic.

(2.) When any such order is in force as respects a railway an officer of any part of Her Majesty's naval or military forces acting under the authority of a Secretary of State or the Admiralty may, by warrant under his hand addressed to the railway company working that railway, require that such traffic as may be specified in the warrant shall be received and forwarded on the railway in priority to any other traffic, and the company shall comply with such warrant, and shall, so far as may be necessary, suspend the receiving and forwarding of all other traffic on such railway.

(3.) If a director of or person employed by a railway company refuses or fails to comply with the exigency of the warrant, or obstructs the carrying thereof into effect, he shall be liable on summary conviction to a fine not exceeding fifty pounds, and any such officer as aforesaid may take such means as seem to him necessary for carrying (and if need be, by force) the warrant into effect.

(4.) A warrant issued in pursuance of this section shall not be in

force for more than one month after the date thereof unless renewed.

(5.) An order made by Her Majesty in pursuance of this section may be revoked by Her Majesty at any time, and upon the Militia being ordered to be disembodied shall cease to operate.

(6.) There shall be paid, out of moneys provided by Parliament, to a railway company required to receive and forward traffic in pursuance of this section, such reasonable remuneration as may be agreed upon, or in default of agreement may be determined by arbitration.

(7.) If any person suffers any loss by reason of anything done under the authority of a Secretary of State or the Admiralty in pursuance of this section, he may petition the Secretary of State or the Admiralty for compensation, and the Secretary of State or Admiralty may pay out of moneys provided by Parliament such reasonable compensation as may seem just; but no such compensation shall be paid in respect of any loss arising under a contract which was made subsequently to the date of an order under this section, or which, though made before, might have been determined subsequently to that date.

(8.) For the purposes of this section—

. . . . . .

The expression "railway" includes any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other; and

The expression "person" includes any person or body of persons, corporate or unincorporate; and

The expression "railway company" means any person as above defined who as owner or lessee of a railway or otherwise is actually engaged in working a railway; and

The expression "traffic" includes persons, animals, goods, and things of every description which are ordinarily carried, or are required by virtue of this Act to be received and forwarded, on a railway.

Reserve Forces Act, 1882.

[45 & 46 Vict. c. 48.]

An Act to consolidate the Acts relative to the Reserve Forces.
[18th August, 1882.]

Preliminary.

Short title.

1. This Act may be recited as the Reserve Forces Act, 1882.

2. [Repealed Stat. Law Rev. Act, 1898.]

PART I.—Army Reserve.

Establishment of army reserve.

3. It shall be lawful for Her Majesty to keep up a force in the United Kingdom, called the army reserve, to consist of two classes, as follows:—

Class I.—The first class shall consist of such number of men as may from time to time be provided by Parliament, and shall be

liable, when called out on permanent service, to serve either in the United Kingdom or elsewhere, and shall consist of men who having served in any of Her Majesty's regular forces, may either be transferred to the reserve in pursuance of the Army Act, 1881, or be enlisted or re-engaged in pursuance of this Act.

For the purpose of establishing a supplemental reserve it shall be lawful for Her Majesty to direct that the first class of the army reserve shall consist of two divisions ; [and in the event of such direction being given, men in the second division shall not be liable to be called out on permanent service until directions have been given for calling out the whole of the first division on such service (*a*)].

Class II.—The second class shall consist of such number of men as may from time to time be provided by Parliament and shall be liable, when called out on permanent service, to serve in the United Kingdom only, and shall consist of men who—

(*a*) being out-pensioners of Chelsea Hospital, or (on account of service in the Royal Marines) out-pensioners of Greenwich Hospital ; or

(*b*) having served in any of Her Majesty's regular forces for not less than the full term of their original enlistment,

may be enlisted or re-engaged in pursuance of this Act.

Procedure and term of service on enlistment or re-engagement.

4. Every man who enters the army reserve—

(*a*) If he enters otherwise than by transfer to the reserve in pursuance of the Army Act, 1881, shall be enlisted ; and

(*b*) If he is re-engaged in the army reserve, shall be re-engaged, in such manner, and for a term of such length, and to begin at such date, as may be prescribed.

Calling out army reserve in aid of the civil power.

5. (1) It shall be lawful for a Secretary of State, at any time when occasion appears to require, to call out the whole or so many as he thinks necessary of the men belonging to the army reserve, to aid the civil power in the preservation of the public peace.

(2.) It shall be lawful for any officer commanding Her Majesty's forces in any town or district, on the requisition in writing of any justice of the peace, to call out for the purpose aforesaid the men belonging to the army reserve who are resident in such town or district, or such of them as he may think necessary.

(3.) Any power by this section vested in a Secretary of State may, as regards men resident in Ireland, be exercised also by the Lord Lieutenant.

Punishment of certain offences by army reserve men.

6. (1.) Where a man belonging to the army reserve—

(*a*) Fails without reasonable excuse on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve ; or

(*b*) When required by or in pursuance of the orders or regulations in force under this Act to attend at any place, fails without reasonable excuse to attend in accordance with such requirement ; or

(*c*) Uses threatening or insulting language, or behaves in an insubordinate manner to any officer or warrant or non-

(*a*) Words in brackets repealed by sec. 1 of the Reserve Forces Act, 1900 (63 & 64, Vict. c. 42), but the repeal is not to affect men who entered the second division before the 6th August, 1900, except with their consent: inasmuch, however, as enlistment in section D is only for four years, the saving has now ceased to have any operation, and all men in the second division can now be called out on permanent service notwithstanding that directions have not been given for calling out the first division. See p. 633, below.

commissioned officer who in pursuance of the orders or regulations in force under this Act is acting in the execution of his office, and who would be the superior officer of such man if such man were subject to military law ; or

(*d*) By any fraudulent means obtains or is accessory to the obtaining of any pay or other sum contrary to the orders or regulations in force under this Act ; or

(*e*) Fails without reasonable excuse to comply with the orders or regulations in force under this Act,

he shall be guilty of an offence.

(2.) A man belonging to the army reserve who commits an offence under this section, whether otherwise subject to military law or not, shal be liable as follows ; that is to say :—

(*a*) Be liable to be tried by court-martial, and on conviction to suffer imprisonment, or such less punishment as is in the Army Act, 1881, mentioned ; or

(*b*) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days, and not more than the maximum term allowed by law for non-payment of the fine ;

and may in any case be taken into military custody.

(3.) Where a man belonging to the army reserve commits in the presence of any officer any offence under this section, or any offence under sub-section two or sub-section three of section one hundred and forty-two of the Army Act, 1881 (relating to the punishment of personation), that officer may, if he thinks fit, order such man, in lieu of being taken into military custody, to be taken into custody by any constable, and brought before a court of summary jurisdiction for the purpose of being dealt with by that court.

(4.) A certificate purporting to be signed by an officer who is therein mentioned as an officer appointed to pay a man belonging to the army reserve, and stating that such man has failed on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve, shall, without proof of the signature or appointment of such officer, be evidence of such failure.

(5.) Where a man belonging to the army reserve is required by or in pursuance of the orders or regulations in force under this Act to attend at any place, a certificate purporting to be signed by an officer or person who is mentioned in such certificate as appointed to be present at such place for the purpose of inspecting men belonging to the army reserve, or for any other purpose connected with such reserve, and stating that the man failed to attend in accordance with the said requirement, shall, without proof of the signature or appointment of such officer or person, be evidence of such failure.

Men exempt from parish offices, &c.

7. A man belonging to the army reserve shall not be liable to serve the office of constable, or any other parochial, township, or borough office.

PART II.—Militia Reserve.

Establishment of militia reserve.

8. (1.) It shall be lawful for Her Majesty to keep up a force in the United Kingdom called the militia reserve, consisting of such number of men as may from time to time be provided by Parliament.

(2.) A Secretary of State may cause to be enlisted from time to time in the militia reserve such militiamen as are willing to enlist themselves, not exceeding the prescribed number (if any) out of any particular corps.

Term of service, and re-engagement.

9. (1.) Every man enlisted in the militia reserve shall be enlisted to serve either for six years or for the residue of the term of his militia engagement.

(2.) A man in the militia reserve who is re-engaged as a militiaman may also be re-engaged in the militia reserve for the prescribed period, not exceeding the term for which he is re-engaged as a militiaman.

Effect of enlistment on position as militiaman.

10. (1.) A man belonging to the militia reserve shall, subject to the provisions of this Act, continue to be for all purposes a militiaman, and if he has enlisted in the militia reserve for a period which will expire subsequently to the expiration of his militia engagement, he shall be deemed to have enlisted in the militia for such longer period.

(2.) A Secretary of State may in his discretion at any time discharge a man belonging to the militia reserve from his engagement, and a man so discharged shall thenceforth for the remainder of his engagement in the militia reserve be a militiaman only, and may be discharged from the militia or otherwise dealt with accordingly.

(3.) When a man has enlisted in the militia reserve, his place in the militia shall not be deemed vacant until directions are given for calling him out on permanent service, but when such directions are given his place shall be deemed vacant, and shall be filled in manner provided by law with respect to vacancies in the militia.

(4.) When a man who has been so called out is released from permanent service on the ground of his services being no longer required, he shall again become for the remainder (if any) of his engagement a militiaman in the corps to which he previously belonged, with rank and pay not lower than he was entitled to before he entered on permanent service; and if there is no vacancy, he shall be deemed to be a supernumerary until there is a vacancy.

(*a*) Provided that—

(a) the rank of any such man shall not be lower than that to which he was entitled in the army immediately before he was released from permanent service; and

(b) if, whilst on permanent service his rank has been reduced below that to which he was entitled before being called out on permanent service, and continues below that rank until the time when he is released from permanent service, his rank in the militia shall be correspondingly reduced; and

(c) if, being of a rank above that of a private in the militia, he has served on permanent service as a private, and whilst so serving has been awarded any punishment which, had he at the time held the rank which he held in the militia, would have involved reduction to a lower rank his rank in the militia, on his being released from permanent service, shall be reduced accordingly; and

(d) if, under the foregoing provisions, the rank of any such man in the militia is raised or reduced above or below that which he held before he entered on permanent service, his pay shall be correspondingly raised or reduced.

(*a*) This proviso to subs. (4) was added by sec. 2 of the Reserve Forces Act, 1900, (63 & 64 Vict. c. 42).

PART III.—General.

Annual Training and Calling out on Permanent Service of Reserves.

Annual training of reserve forces.

11. (1.) All or any of the men belonging to the army reserve and the militia reserve respectively may be called out for annual training at such time or times, and at such place or places within the United Kingdom, and for such period or periods, as may be prescribed, not exceeding in any one year, in the case of a man belonging to the army reserve, twelve days or twenty drills, and in the case of a man belonging to the militia reserve, fifty-six days.

(2.) Every man so called out may, during his annual training, be attached to and trained with a body of the regular or auxiliary forces.

(3.) The annual training under this section of a man belonging to the militia reserve shall be in substitution for the annual training to which he is liable as a militiaman.

Calling out reserve forces on permanent service.

12. (1.) In case of imminent national danger or of great emergency it shall be lawful for Her Majesty in Council by proclamation, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the proclamation, if Parliament be not then sitting, to order that the army reserve and the militia reserve, or either of them, shall be called out on permanent service.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for calling out the forces or force mentioned in the proclamation, or all or any of the men belonging thereto.

(3.) Every such proclamation and the directions given in pursuance thereof shall be obeyed as if enacted in this Act, and every man for the time being called out by such directions shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be called out on permanent service.

(4.) A proclamation under this section shall for the purposes of the Army Act, 1881, be deemed to be a proclamation requiring soldiers in the reserve to re-enter upon army service.

Assembly of Parliament when reserve forces ordered to be called out on permanent service.

13. Whenever Her Majesty orders the army reserve and militia reserve, or either of them, to be called out on permanent service, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

Service of reserve men called out.

14. (1.) A man belonging to either of the reserve forces when called out on permanent service shall be liable to serve until Her Majesty no longer requires his services, so, however, that he shall not be required to serve for a period exceeding in the whole the remainder unexpired of his term of service in the reserve force to which he belongs, and any further period not exceeding twelve months during which as a soldier of the regular forces he can, under section eighty-seven of the Army Act, 1881, be detained in service after the time at which he would otherwise be entitled to be discharged.

(2.) A man called out on permanent service shall during his service form part of the regular forces, and be subject to the Army Act, 1881, accordingly, and the competent military authority within the meaning of Part Two of that Act may, if it seems proper, appoint him to any corps as a soldier of the regular forces, and the competent military authority within the meaning of the said Part Two may within three months after such appointment transfer him to any other corps of the regular forces, [so, however, that he shall not without his consent be appointed or transferred to a corps which is not in the arm or branch in which he previously served. (*a*)]

(3.) Nothing in this section shall render a man in the second class of the army reserve liable to serve out of the United Kingdom, and such man may from time to time be transferred from one corps to another for the purpose of securing his non-liability to service out of the United Kingdom.

Punishment for non-attendance for annual training or permanent service, &c.

15. (1.) When a man belonging to the army or militia reserve is called out for annual training or on permanent service, or when a man belonging to the army reserve is called out in aid of the civil power, and such man, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at any time and place at which he is required upon such calling out to attend, he shall—

(*a*) If called out on permanent service, or in aid of the civil power, be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881; and

(*b*) If called out for annual training, be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881.

(2.) A man belonging to the army or militia reserve who commits an offence under this section, or under section twelve or section fifteen of the Army Act, 1881, whether otherwise subject to military law or not, shall be liable as follows; that is to say:—

(*a*) Be liable to be tried by court-martial, and convicted and punished accordingly; or

(*b*) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine;

and may in any case be taken into military custody.

Supplemental provisions as to deserters and absentees.

16. (1.) Section one hundred and fifty-four of the Army Act, 1881, shall apply to a man who is a deserter or absentee without leave from the army or militia reserve within the meaning of this Act in like manner as it applies to a deserter in that section mentioned, and a man who under that section is delivered into military custody or committed for the purpose of being so delivered may be tried as provided by this Act.

(2.) Any person who falsely represents himself to be a deserter or absentee without leave from the army or militia reserve shall

(*a*) The words in brackets were repealed by s. 2 of the Reserve Forces Act, 1906 (6 Edw. 7, c. 11), but the repeal does not affect any man enlisted before the passing of the Act (viz., 29 July, 1906), except with his consent.

be liable, on conviction by a court of summary jurisdiction, to imprisonment, with or without hard labour, for a term not exceeding three months.

Punishment for inducing reserve man to desert or absent himself.

17. (1.) Any person who by any means whatever—

(*a*) Procures or persuades any man belonging to the army or militia reserve to commit an offence of absence without leave within the meaning of this Act, or attempts to procure or persuade any man belonging to the army or militia reserve to commit such offence; or

(*b*) Knowing that a man belonging to the army or militia reserve is about to commit an offence of absence without leave within the meaning of this Act, aids or assists him in so doing; or

(*c*) Knowing any man belonging to the army or militia reserve to be an absentee without leave within the meaning of this Act, conceals such man, or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue;

shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

(2.) Section one hundred and fifty-three of the Army Act, 1881, shall apply as if a man belonging to the army or militia reserve were a soldier, and as if the word "desert" and other words referring to desertion included desertion within the meaning of this Act as well as desertion within the meaning of the Army Act, 1881; and any person who, knowing any man belonging to the army or militia reserve to be a deserter within the meaning of this Act or of the Army Act, 1881, employs or continues to employ such man, shall be deemed to aid him in concealing himself within the meaning of the said section.

Supplemental.

Attestation of men enlisting in reserve forces.

18. (1.) Subject to the provisions of this Act, and save as is otherwise prescribed, a man enlisting in the army or militia reserve shall be attested in the same manner as a recruit in the regular forces, and the following sections of the Army Act, 1881 (that is to say):—

Section eighty (relating to the mode of enlistment and attestation);

Section ninety-eight (imposing a fine for unlawful recruiting);

Section ninety-nine (making recruits punishable for false answers);

Section one hundred (relating to the validity of attestation and enlistment, or re-engagement);

Section one hundred and one (relating to the competent military authority); and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence;

shall apply in like manner as if they were herein re-enacted, with the substitution—

(*a*) Of "man," or, if the context so requires, "reserve man," for "soldier," and of "army reserve or militia reserve, as the case may be," for "regular forces;" and

(*b*) In section one hundred, so far as relates to the militia reserve, of "one whole period of annual training" for "three months."

(2.) A man so enlisting may be attested by a regular officer, or by a militia officer, and the sections of the Army Act, 1881, in this

section mentioned, and also section thirty-three of the same Act, shall, as applied to the army or militia reserve, be construed as if a justice of the peace in those sections included such an officer.

Record of illegal absence of reserve man.

19. (1.) Where a man belonging to the army reserve or militia reserve is subject to military law, and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act, 1881, may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which such man was subject to military law is less than twenty-one days, or has expired before the expiration of twenty-one days; and the record mentioned in that section may be entered in manner thereby provided, or in such regimental books and by such officer as may be prescribed.

(2.) Where a man belonging to the army reserve or militia reserve fails to appear at the time and place at which he is required upon being called out for annual training or on permanent service to attend, and his absence continues for not less than fourteen days, an entry of such absence shall be made by the prescribed officer in the prescribed manner and in the prescribed regimental books, and such entry shall be conclusive evidence of the fact of such absence.

Orders and regulations as to reserve forces.

20. (1.) Subject to the provisions of this Act, it shall be lawful for Her Majesty, by order signified under the hand of a Secretary of State, from time to time to make, and when made revoke and vary, orders with respect to the government, discipline, and pay of the army reserve and the militia reserve, or either of them, and with respect to other matters and things relating to the army reserve and the militia reserve or either of them, including any matter by this Act authorized to be prescribed, or expressed to be subject to orders or regulations.

(2.) Subject to the provisions of any such order, a Secretary of State may from time to time make, and when made revoke and vary, general or special regulations with respect to any matter with respect to which Her Majesty may make orders under this section.

(3.) Where a man entered the army or militia reserve before the date of any order or regulation made under this Act, nothing in such order or regulation shall render such man liable, without his consent, to be appointed, transferred, or attached to any military body to which he could not, without his consent, have been appointed, transferred, or attached if the said order or regulation had not been made.

(4.) All orders and general regulations made under this Act shall be laid before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, or if Parliament be not sitting, then as soon as practicable after the beginning of the then next session of Parliament.

Exercise of powers vested in holder of military office.

21. (1.) Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may in relation to the reserve forces be exercised by or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service.

(2.) Where by this Act, or by any order or regulation in force under this Act, any order is authorized to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorized to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

Pensions of army reserve men.

22. Where, either before or after the passing of this Act, a man in the army reserve has been called out on permanent service, and at the termination of such service has been returned to the army reserve, and has become entitled to pension under any order or regulation in force under this Act (whether made before or after such calling out or return), the Commissioners of Chelsea Hospital shall have the same power to award and pay the said pension, and otherwise in relation to the said pension, as they would have if such man had been discharged from the army on reduction.

Application to reserve forces of enactments respecting exemptions from tolls and conveyance of regular forces.

23. (1.) For the purpose of section one hundred and forty-three of the Army Act, 1881, and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the army or militia reserve, when going to or returning from any place at which they are required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of Her Majesty's regular forces on duty.

(2.) All enactments for the time being in force concerning the conveyance by railway or otherwise of any part of the regular forces, and their baggage, stores, arms, ammunition, and other necessaries and things, shall apply as if the army and militia reserve were such part of the regular forces.

Notices.

24. With respect to notices required in pursuance of the orders or regulations in force under this Act to be given to men belonging to the army or militia reserve, the following provisions shall have effect :—

(1) A notice may be served on any such man either by being sent by post to his last registered place of abode, or by being served in the prescribed manner ;

(2) Evidence of the delivery at the last registered place of abode of a man belonging to the army or militia reserve of a notice, or of a letter addressed to such man and containing a notice, shall be evidence that such notice was brought to the knowledge of such man ;

(3) The publication of a notice in the prescribed manner in the parish in which the last registered place of abode of a man belonging to the army or militia reserve is situate shall be sufficient notice to such man, notwithstanding that a copy of such notice is not served on him ;

(4) Every constable, overseer of the poor, and inspector of the poor shall, when so required by or on behalf of a Secretary of State, conform with the orders and regulations for the time being in force under this Act with respect to the publication and service of notices, and in default shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

Trial of offences.

25. (1.) Any offence which under this Act is punishable on conviction by court-martial, shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, 1881, with this modification, that any reference in that Act to forfeitures and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(2.) Any offence which under this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be recovered in manner provided by sections one hundred and sixty-six, one hundred and

sixty-seven, and one hundred and sixty-eight of the Army Act 1881, in like manner as if those sections were herein re-enacted and in terms made applicable to this Act.

(3.) Save as provided by the said section one hundred and sixty-six, the minimum fixed by this Act for the amount of any fine or for the term of any imprisonment shall be duly observed by courts of summary jurisdiction, and shall, notwithstanding anything contained in any other Act, not be reduced by way of mitigation or otherwise.

(4.) For all purposes in relation to the arrest, trial, and punishment of a person for any offence punishable under this Act, including the summary dealing with the case by the commanding officer, this Act shall apply to the Channel Islands and the Isle of Man.

Provisions as to offences triable both by court-martial and by court of summary jurisdiction.

26. With respect to the trial and punishment of men charged with offences which in pursuance of this Act are cognisable both by a court-martial and by a court of summary jurisdiction, the following provisions shall have effect :—

(1) An alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either of such courts, according as may be prescribed by orders or regulations under this Act (*a*).

(2) Proceedings against an alleged offender, before either a court-martial or his commanding officer or a court of summary jurisdiction, may be instituted whether the term of his reserve service has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to an officer who under the powers or regulations in force under this Act has power to direct the offender to be tried by a court-martial or by a court of summary jurisdiction, if the offender is apprehended at that time, or if he is not apprehended at that time, then within two months after the time at which he is apprehended, whether such apprehension is by a civil or military authority, and any limitation contained in any other Act with respect to the time for hearing and determining an offence shall not apply in the case of any proceeding so instituted.

(4) For the purposes of this section the expression "tried by court-martial" shall include "dealt with summarily by his commanding officer."

Evidence.

27. (1.) Section one hundred and sixty-four of the Army Act, 1881 (which relates to evidence of the civil conviction or acquittal of a person subject to military law), shall apply to a man belonging to the army or militia reserve who is tried by a civil court, whether he is or is not at the time of such trial subject to military law.

(2.) Section one hundred and sixty-three of the Army Act, 1881 (relating to evidence), shall apply to all proceedings under this Act.

Definitions.

28. In this Act, unless the context otherwise requires—

The expression "man" includes a warrant officer not holding an honorary commission, and a non-commissioned officer.

The expression "out-pensioners of Chelsea Hospital" includes

(*a*) He is not to be tried by a court of summary jurisdiction without the written sanction of an officer who has power to direct his trial by court-martial, or some authority superior to that officer: Army Reserve Regulations para. 50.

all persons whose claims for prospective or deferred pension have been registered in virtue of any warrant of Her Majesty.

The expression "prescribed" means prescribed by orders or regulations in force under this Act.

Other expressions have the same meaning as they have in the Army Act, 1881.

In the Army Act, 1881, the expressions "army reserve force" and "militia reserve force" shall respectively mean the army reserve and militia reserve under this Act.

Repeal of Acts.

29. . . . . (*a*).

(2.) All orders, warrants, regulations, and directions in relation to the army reserve force or to the militia reserve force which exist at the commencement of this Act shall, so far as consistent with the tenor thereof, be of the same effect as if they were orders or regulations under this Act, and may be revoked or altered accordingly.

(3.) Any man who at the commencement of this Act belongs to the first or second class of the army reserve force, or to the militia reserve force, shall continue to belong to the first or second class of the army reserve or to the militia reserve under this Act, as the case may be, in like manner as if he had entered the same in pursuance of this Act.

(4.) Where a man belonging to either the army reserve force or the militia reserve force entered such force before the passing of the Regulation of the Forces Act, 1881, or before the date of any regulation made under the said Act, nothing in the said Act or regulation or in this Act shall require such man without his consent to serve in or be appointed, transferred, or attached to any military body in or to which he could not have been required without his consent to serve or be appointed, transferred, or attached, if the Regulation of the Forces Act, 1881, or this Act, or the said regulation, as the case may be, had not been passed or made, or to serve for any longer period than that for which he was before the passing of the Regulation of the Forces Act, 1881, or before the date of such regulation, as the case may be, liable to serve.

44 & 45 Vict. c. 57.

. . . . (*a*).

SCHEDULE.

ENACTMENTS REPEALED.

[Repealed, Stat. Law Rev. Act, 1898.]

Reserve Forces Act, 1890.

[53 & 54 VICT. c. 42.]

An Act to remove certain doubts which have arisen under the Reserve Forces Act, 1882, *and for other purposes connected therewith.*

[14th August, 1890.

Whereas certain men engaged in railway, post office, or telegraph service, and being volunteers, have been enlisted in Her Majesty's regular forces, and immediately upon such enlistment been transferred, under the Army Act, 1881, to the reserve, and have been attached as supernumeraries to a volunteer corps, and doubts have

(*a*) Subsection (5) was repealed by the Stat. Law Rev. Act, 1898.

arisen as to whether such enlistment, transfer, and attachment are authorised by law, and it is expedient to remove such doubts :

Be it enacted . . . . as follows :—

Authority to transfer men to reserve immediately on enlistment.

1. It is hereby declared that regulations of a Secretary of State under the Army Act can authorise any man having the special qualifications prescribed by those regulations to be enlisted in any of Her Majesty's regular forces, and immediately upon such enlistment to enter the reserve.

Training of reserve men with volunteers. 45 & 46 Vict. c. 58. 26 & 27 Vict. c. 65. 32 & 33 Vict. c. 81.

2. Subject to any order or regulations under the Reserve Forces Act, 1882, any man belonging to the Army Reserve may be attached to a volunteer corps for the purpose of drill or training, and while so attached shall for the purposes of the Volunteer Acts, 1863 and 1869, and any Acts amending the same, be a volunteer of such corps without prejudice to his position as a man belonging to the Army Reserve.

Saving.

3. Any enlistment, transfer to the Army Reserve, or attachment to a volunteer corps of any man which was effected before the passing of this Act, and would have been valid if done subsequently to the passing of this Act, shall be deemed to have been valid.

Short title and construction.

4. This Act shall be construed as one with the Reserve Forces Act, 1882, and that Act and this Act may be cited together as the Reserve Forces Acts, 1882 and 1890, and this Act may be cited as the Reserve Forces Act, 1890.

Reserve Forces and Militia Act, 1898.

[61 & 62 Vict. c. 9.]

An Act to amend the Law relating to the Reserve Forces and Militia. [1st July, 1898.]

Liability of members of the Army Reserve to be called out on permanent service. 45 & 46 Vict. c. 48.

1. Any man belonging to the first class of the Army Reserve, whose character on transfer to the Army Reserve is good, shall, if he so agrees in writing, be liable during the first twelve months (*a*) of his service in that reserve to be called out on permanent service without such proclamation or communication to Parliament as is mentioned in Section twelve of the Reserve Forces Act, 1882, and the calling out of men under this Act shall not involve the meeting of Parliament as required by Section thirteen of that Act.

Provided as follows :—

(*a.*) The number of the men so liable shall not at any one time exceed five thousand ; (*a*)

(*b.*) The power of calling out men under this section shall not be exercised except when they are required for service outside the United Kingdom when warlike operations are in preparation or in progress ;

(*c.*) A man called out under this section shall not be liable to serve for more than twelve months ;

(*d.*) Any agreement under this section may be revoked by three months' notice in writing ; and

(*e.*) Any exercise of the power of calling out men under this section shall be reported to Parliament as soon as may be.

2. [Amends Section 12 of the Militia Act, 1882 ; see p. 636.]

(*a*) Under s. 32 (2) of the Territorial and Reserve Forces Act, 1907, this period may by agreement extend to two years, and six thousand has been substituted for five thousand.

Provision as to numbers authorised by Army Act.

3. The number of men for the time being employed under this Act shall not be reckoned in the number of the forces authorised by the Army Act for the time being in force.

Short title.

4. This Act may be cited as the Reserve Forces and Militia Act, 1898.

Reserve Forces Act, 1899.

[62 & 63 Vict. c. 40.]

An Act to amend the Law relating to the Reserve Forces.

[9th August, 1899.]

Permission to Army Reserve men to reside out of United Kingdom.

1. Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving out of the United Kingdom, he may, at his own request, be transferred to the reserve without being required to return to the United Kingdom, but subject to such conditions as to residence, as to liability to be called out for annual training or on permanent service or in aid of the civil power, or as to any other matters, as may be prescribed by regulations under Section twenty of the Reserve Forces Act, 1882, and thereupon the provisions of that Act, and of the Acts amending that Act, shall apply in the case of the soldiers so transferred with such adaptations as may be made by those regulations.

45 & 46 Vict. c. 48.

Short title.

2. This Act may be cited as the Reserve Forces Act, 1899.

Reserve Forces Act, 1900.

[63 & 64 Vict. c. 42.]

An Act to amend the Reserve Forces Act, 1882.

[6th August, 1900.]

Amendment of 45 & 46 Vict. c. 48, s. 3, as to calling out on permanent service.

1. Men in the second division of the first class of the Army Reserve shall be liable to be called out on permanent service, notwithstanding that directions have not been given for calling out the whole of the first division on such service. . . . . .

[For the effect of the rest of this section, see p. 621 above.]

2. [The effect of this section is shown on p. 623 above.]

Short title.

3. This Act may be cited as the Reserve Forces Act, 1900.

Reserve Forces Act, 1906.

[6 Edw. 7, c. 11.]

An Act to amend the Law relating to the Reserve Forces.

[20th July, 1906.]

Extension of Reserve Forces Acts to men when outside the United Kingdom.

1. (1) Notwithstanding anything in the Reserve Forces Acts, a man belonging to the Army Reserve may, if so authorized by or under the directions of the Secretary of State, reside in any British protectorate or in any part of His Majesty's dominions outside the United Kingdom, and men may be enlisted into the Army Reserve in any British protectorate or in any part of His

Majesty's dominions outside the United Kingdom except in a colony possessing responsible government, and those Acts shall, subject to such adaptations as may be made under this section, apply to such men whilst so residing and to such enlistment.

(2) Regulations made under section twenty of the Reserve Forces Act, 1882, may prescribe the conditions under which men belonging to the Army Reserve may, if so authorized, reside outside the United Kingdom, and the conditions under which men may be enlisted into the Army Reserve outside the United Kingdom, and may make such adaptations in the Reserve Forces Acts as may be necessary for the purpose of adapting those Acts to the circumstances of the several parts of His Majesty's dominions outside the United Kingdom or of British protectorates. 35 & 46 Vict. c. 48.

(3) In this section the expression "Reserve Forces Acts" means the Reserve Forces Act, 1882, as amended by any subsequent enactment, and includes any enactment applied by that Act as so amended; and the expression "colony possessing responsible government" means any colony which is specified in the Schedule to this Act, or which may hereafter on the grant to the colony of responsible government be added to that Schedule by Order in Council.

2. [The effect of this section is shown on p. 625, note (*a*), above.] Short title.

3. This Act may be cited as the Reserve Forces Act, 1906, and the Reserve Forces Acts 1882 and 1890, and so much of the Reserve Forces and Militia Act, 1898, as applies to the reserve forces, and the Reserve Forces Act, 1899, and the Reserve Forces Act, 1900, and this Act may be cited together as the Reserve Forces Acts, 1882 to 1906. 45 & 46 Vict. c. 48. 61 & 62 Vict. c. 9. 53 & 54 Vict. c. 42. 62 & 63 Vict. c. 40. 63 & 64 Vict. c. 42.

Section 1.

SCHEDULE.

List of Colonies.

The Dominion of Canada.
The Commonwealth of Australia.
New Zealand.
Cape Colony.
Natal.
Newfoundland.

Militia Act, 1882.

[45 & 46 Vict. c. 49.]

An Act to consolidate the Acts relating to the Militia.

[18th August, 1882.]

Preliminary.

1. This Act may be cited as the Militia Act, 1882. Short title.

2. [Repealed, Stat. Law Rev. Act, 1898.]

PART I.—Maintenance and Government.

(*a*) **3.** It shall be lawful for Her Majesty to raise and keep up a militia, consisting of such number of men as may from time to time be provided by Parliament. Raising and number of militia.

(*a*) **4.** (1.) Subject to the provisions of the Militia Acts, it shall be Organisation of militia.

(*a*) See as to the application of these sections to Yeomanry, Militia and Yeomanry Act, 1902 (2 Edw. VII c. 39), s. 1 (3).

lawful for Her Majesty, by order signified under the hand of a Secretary of State, from time to time to make, and when made revoke and vary, orders with respect to the government, discipline, and pay of the militia, and with respect to all other matters and things relating to the militia, including any matter by this Act authorized to be prescribed, or expressed to be subject to orders or regulations.

(2.) The said orders may provide for the formation of militiamen into regiments, battalions, or military bodies, and for the formation of such regiments, battalions, or military bodies into corps, either alone or jointly with any other part of Her Majesty's forces, and for appointing, transferring, or attaching militiamen to corps, and for posting, attaching, or otherwise dealing with militiamen within the corps, and may regulate the appointment, rank, duties, and numbers of the militia officers and non-commissioned officers.

(3.) Subject to the provisions of any such order, a Secretary of State may from time to time make, and when made revoke and vary, general or special regulations with respect to any matter with respect to which Her Majesty may make orders under this section.

(4.) Provided that the said orders or regulations shall not—

(*a*) Affect or extend the term for which or the area within which a militiaman is liable under the Militia Acts to serve; or

(*b*) Authorize a militiaman when belonging to one corps to be transferred without his consent to another corps; or

(*c*) Where the corps of a militiaman includes any battalion or other body of the regular forces, authorize him to be posted without his consent to that battalion or body.

(5.) Where a militiaman was enlisted or re-engaged before the date of any order or regulation under this Act, nothing in such order or regulation shall render him liable without his consent to be appointed, transferred, or attached to any military body to which he could not without his consent have been appointed, transferred, or attached if the said order or regulation had not been made.

(6.) All orders and general regulations made under this Act shall be laid before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, or if Parliament be not sitting, then as soon as practicable after the beginning of the then next session of Parliament.

Vesting in Her Majesty of jurisdiction under certain Acts in relation to the militia.

5. All jurisdiction, powers, duties, command, and privileges over, of, or in relation to the militia, or any part thereof, which under any Act, other than this Act, are vested in or exercisable by the lieutenants of counties, or by the Lord Lieutenant of Ireland, either of his own motion or with the advice of the Privy Council in Ireland, shall be exercisable by Her Majesty, through a Secretary of State or any officers to whom Her Majesty may, by the advice of a Secretary of State, delegate such jurisdiction, powers, duties, command, and privileges, or any of them, or any part thereof; saving, nevertheless, to the lieutenants of counties their jurisdictions, powers, duties, and privileges in relation to raising the militia by ballot, and the proceedings incidental thereto.

First appointments to lowest rank of militia officer.

6. First appointments to the lowest rank of militia officer in any corps shall be given to persons recommended by the lieutenant of the county, if a person approved by Her Majesty is recommended by such lieutenant for any such appointment within thirty days after notice of a vacancy for such appointment has been given to such lieutenant in the prescribed manner provided the person or persons fulfil all the prescribed conditions as to age, physical fitness, and educational qualifications; and where a corps comprises militia-

men of two or more counties, the recommendations for such first appointments shall be made by the lieutenants of the respective counties in such rotation or otherwise as may be from time to time prescribed.

PART II.—Voluntary Enlistment.

Raising of men by voluntary enlistment.

7. Subject to the provisions of this Act, private militiamen may be raised by voluntary enlistment by such persons and in such manner and subject to such regulations as may be prescribed, and this part of this Act shall apply only to persons who have voluntarily enlisted.

Enlistment, term of service, and re-engagement.

8. (1.) Every militiaman enlisted under this Act shall be enlisted as a militiaman for some county, and shall forthwith be appointed to serve in a corps for that county, or for some area comprising the whole or part of that county.

(2.) Every militiaman enlisted under this Act shall be enlisted to serve for such period, not exceeding six years, as may be prescribed, and such period shall be reckoned from the date of his attestation.

(3.) Every militiaman enlisted under this Act may from time to time within twelve months of the end of his current term of service be re-engaged for such period, not exceeding six years, from the end of that current term, as may be prescribed.

(4.) A militiaman on re-engagement shall make the prescribed declaration before a justice of the peace or an officer.

(5.) Militiamen enlisted or re-engaged under this Act shall, for the purposes of any enactment referring to persons enrolled in the militia, be deemed to be enrolled.

Application to militia recruits of certain enlistment sections of 44 & 45 Vict. c. 58.

9. (1.) The following sections of the Army Act, 1881, shall apply to militia recruits; that is to say:—

Section eighty (relating to the mode of enlistment and attestation);

Section ninety-six (relating to the claims of masters to apprentices);

Section ninety-eight (imposing a fine for unlawful recruiting);

Section ninety-nine (making recruits punishable for false answers);

Section one hundred (relating to the validity of attestation and enlistment, or re-engagement);

Section one hundred and one (relating to the competent military authority); and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence;

And the said sections shall apply in like manner as if they were herein re-enacted, with the substitution—

(*a*) of "militia" for "regular forces," and of "militiaman" for "soldier"; and

(*b*) (in section one hundred) of "during three months, or during "the whole period of preliminary training if less than "three months, or during one whole period of annual "training" for "during three months."

(2.) A recruit may be attested by any lieutenant or deputy-lieutenant of any county in the United Kingdom, or by a regular officer, or by a militia officer, and the sections of the Army Act, 1881, in this section mentioned, and also section thirty-three of the

same Act, shall, as applied to the militia, be construed as if a justice of the peace in those sections included such lieutenant, deputy-lieutenant, or officer.

(3.) A man enlisted in the militia, until duly discharged in the prescribed manner, shall remain subject to this Act as a militiaman.

Enlistment of men discharged with disgrace from army or navy, or contrary to rules.

10. (1.) If a person—

(*a*) Having been discharged with disgrace from any part of Her Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the militia without declaring the circumstances of his discharge or dismissal ; or

(*b*) Is concerned when subject to military law in the enlistment for service in the militia of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against the Army Act, 1881, or this Act ; or

(*c*) Wilfully contravenes when subject to military law any enactments, orders, or regulations which relate to the enlistment or attestation of militiamen,

such person shall be guilty of an offence.

(2.) A person guilty of an offence under this section, whether otherwise subject to military law or not, shall be liable as follows ; that is to say:—

(*a*) Be liable to be tried by court martial, and on conviction to suffer such punishment as is imposed for the like offence by section thirty-two or thirty-four of the Army Act, 1881, as the case may be ; or

(*b*) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to imprisonment, with or without hard labour, for any term not less than two and not more than six months ;

and may in any case be taken into military custody.

(3.) For the purpose of this section the expression "discharged with disgrace" means discharged with ignominy, discharged as incorrigible and worthless, or discharged on account of a conviction for felony or a sentence of penal servitude.

Enlistment of militiamen in regular forces.

11. Militiamen may, if it is so prescribed, and subject to the prescribed conditions (if any), enlist in the regular forces ; and a militiaman so enlisting in the regular forces shall be deemed to be discharged from the militia.

PART III.—General Provisions.

Service and Oath.

Area of service of militia.

12. (1.) Any part of the militia shall be liable to serve in any part of the United Kingdom, but no part of the militia shall be carried or ordered to go out of the United Kingdom.

(2.) Provided that if any part of the militia make a voluntary offer certified by their commanding officer to extend their services to *any place out of the United Kingdom* (*a*), it shall be lawful for

(*a*) The words in italics were, by s. 2 of the Reserve Forces and Militia Act, 1898, substituted for the words "the islands of Guernsey, Jersey, Alderney, and Sark, the Isle of Man, Malta, and the garrison of Gibraltar, or any of them." The same section also provides that this section is to be construed as authorising the employment of any member of the Militia volunteering to serve for a period not exceeding one year, whether an order embodying the Militia is in force or not at the time. See p. 652.

Her Majesty, if she thinks fit, to accept such offer and to employ the said part of the militia accordingly; and where such offers are made by several parts of the militia it shall be lawful for Her Majesty, as may seem fit, to accept some and refuse others of such offers.

(3.) It shall be lawful for Her Majesty to direct the commanding officer of any part of the militia to propose to that part to make an offer to extend to the area of their services as aforesaid under such regulations as Her Majesty may please to appoint.

(4.) A person shall not be compelled to make an offer to serve as aforesaid, or be engaged so to serve, except by his own consent;

and a commanding officer shall not certify any voluntary offer previously to his having explained to every person offering so to serve that the offer is to be purely voluntary on his part.

Oath of allegiance of militiaman.

13. Every militiaman raised under this Act or under any other of the Militia Acts shall take the following oath; that is to say:—

"I, *A.B.*, do solemnly promise and swear, that I will be faithful "to [*here insert name of sovereign for time being*], her [*or* his] heirs "and successors, and that I will faithfully serve in the militia until I "shall be discharged."

And such oath may be administered by any lieutenant or deputy lieutenant of a county, or by any justice of the peace, or by any regular officer or militia officer, and in the case of a militiaman enlisted under this Act shall be specified in the attestation paper.

Training.

Preliminary training of militia recruits.

14. (1.) Every militiaman shall attend for preliminary training at such place or places within the United Kingdom, at such time or times, and for such period or periods, not exceeding in the whole six months, as may be prescribed, and may be trained by such officers, non-commissioned officers, and men of the regular forces or of the militia as may be prescribed.

(2.) The time of such preliminary training shall not be included in the time during which such man is liable to be called out for annual training (*a*).

Calling up for instruction.

15. Any orders or regulations under this Act may provide for any militia officer or militiaman, with his own consent, being called up for the purpose of instruction.

Annual training.

16. Save as otherwise provided by this Act, the militia shall be annually trained for not less than twenty-one nor more than twenty-eight days in every year, at such times and at such places in any part of the United Kingdom as may be prescribed (*b*); and for that purpose may be called out once or oftener in every year.

Extension, reduction, or suspension of annual training.

17. Her Majesty in Council may from time to time—

(*a*) Order that the period of annual training in any year of all or any part of the militia be extended, but so that the whole period of annual training be not more than fifty-six days in any year; or

(*b*) Order that the period of annual training in any year of all or any part of the militia be reduced to such time as to Her Majesty may seem fit; or

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(*a*) The provisions as to preliminary training do not apply to the yeomanry: Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 14), s. 1 (*a*).

(*b*) In the case of mobile militia artillery the period is to be a prescribed period not exceeding eighty-four days: Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 14), s. 2. In the case of the yeomanry the period is not less than fourteen or more than eighteen days: *ib.* s. 1 (*b*).

(*c*) Order that in any year the annual training of all or any part of the militia be dispensed with ;

and every such order shall have full effect.

Embodiment.

Embodiment of militia.

18. (1.) In case of imminent national danger or of great emergency it shall be lawful for Her Majesty in Council by proclamation (the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council, and notified by the proclamation, if Parliament be not sitting) to order the militia to be embodied.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for embodying all or any part of the militia.

(3.) Every such proclamation and the directions given in pursuance thereof shall be obeyed as if enacted in this Act, and where such directions for the time being direct the embodiment of any part of the militia, every officer and man belonging to that part shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be embodied ; and such officers and men are in this Act referred to as embodied, or as the embodied part or parts of the militia.

Assembly of Parliament when militia is ordered to be embodied.

19. Whenever Her Majesty orders the militia to be embodied, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days and Parliament shall accordingly meet and sit upon the day appointed by such proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

Disembodying of militia.

20. (1.) It shall be lawful for Her Majesty by proclamation to order that the militia shall be disembodied, and thereupon a Secretary of State shall give such directions as may seem necessary or proper for carrying the said proclamation into effect.

(2.) Until any such proclamation of Her Majesty has been issued a Secretary of State may from time to time, as he may think expedient for the public service, give such directions as may seem necessary or proper for disembodying any embodied part of the militia and for embodying any part of the militia not embodied, whether previously disembodied or otherwise.

(3.) After the date fixed by the directions for the disembodiment of any part of the militia, the officers and men belonging to that part shall be in the position of militia officers and men not embodied.

Provisions common to Annual Training and Embodiment.

Notice of times and places of attendance for annual training or embodiment.

21. (1.) Where directions have been given for calling out for annual training or embodying any part of the militia the commanding officer shall cause a notice to attend at the time and place fixed to be served on each militiaman required to attend.

(2.) Such notice shall also be published in the prescribed manner in every parish in the county or area to which the corps of any such militiaman belongs.

(3.) The notices to be served and published under this section shall be served and published within such reasonable time before the time fixed for the attendance of the persons required to attend as may be prescribed.

22. With respect to notices required in pursuance of this Act or of the orders and regulations in force under this Act to be given to militiamen, the following provisions shall have effect :— General provision as to notices.

(1.) Any such notice may be served on a militiaman, either by being sent by post to his usual place of abode or by being served in the prescribed manner ;

(2.) For the purpose of the service of any such notice the usual place of abode of a militiaman shall be that stated on his attestation or enrolment, or that subsequently notified by him in the prescribed manner ;

(3.) Evidence of the delivery at the usual place of abode of a militiaman of a notice, or of a letter addressed to such man, and containing a notice, shall be evidence that such notice was brought to the knowledge of such man ;

(4.) The publication of any such notice in
in every parish in the county or area to which a corps belongs, shall be sufficient notice to every militiaman in that corps to whom the notice applies, notwithstanding that a copy of such notice is not served upon him ;

(5.) Every constable and overseer of the poor shall, when so required by or on behalf of a Secretary of State, conform with the orders and regulations for the time being in force under this Act with respect to the publication and service of notices, and in default shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

Desertion and Fraudulent Enlistment.

23. (1.) Any militiaman who commits any of the following offences, that is to say :— Punishment for non-attendance for preliminary or annual training or embodiment, and for desertion or absence without leave.

Without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in accordance with the orders and regulations under this Act, fails to appear at the time and place appointed, either for preliminary training, or for annual training, or for assembling on embodiment, shall—

(*a*) In the case of embodiment, be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act, 1881 ; and

(*b*) In any other case, be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881.

(2.) A militiaman who commits an offence under this section, or under section twelve or section fifteen of the Army Act, 1881, whether otherwise subject to military law or not, shall be liable as follows ; that is to say:—

(*a*) Be liable to be tried by court martial, and convicted and punished accordingly ; or

(*b*) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine ;

and may in any case be taken into military custody.

Supplemental provision as to deserters and absentees.

24. (1.) Section one hundred and fifty-four of the Army Act, 1881, shall apply to a militiaman who is a deserter or absentee without leave within the meaning of this Act in like manner as it applies to a deserter in that section mentioned, and a man who under that section is delivered into military custody or committed for the purpose of being so delivered may be tried as provided by this Act.

(2.) Any person who falsely represents himself to any military, naval, or civil authority to be a deserter or absentee without leave from the militia, shall be liable, on conviction by a court of summary jurisdiction, to imprisonment, with or without hard labour, for a term not exceeding three months.

Punishment for inducing militiaman to desert or absent himself.

25. (1.) Any person who by any means whatsoever—

(*a*) Procures or persuades any militiaman to commit an offence of absence without leave within the meaning of this Act, or attempts to procure or persuade any militiaman to commit such offence ; or

(*b*) Knowing that a militiaman is about to commit the offence of absence without leave within the meaning of this Act, aids or assists him in so doing ; or

(*c*) Knowing any militiaman to be an absentee without leave within the meaning of this Act, conceals such militiaman or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue ;

shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

(2.) Section one hundred and fifty-three of the Army Act, 1881, shall apply as if a militiaman were a soldier, and as if the word "desert," and other words referring to desertion, included desertion within the meaning of this Act as well as desertion within the meaning of the Army Act, 1881 ; and any person who, knowing any militiaman to be a deserter within the meaning of this Act or of the Army Act, 1881, employs or continues to employ such militiaman, shall be deemed to aid him in concealing himself within the meaning of the said section.

Fraudulent enlistment or false answer of militiaman.

26. (1.) If any person commits any of the following offences ; that is to say :—

(*a*) When belonging to the militia, without having fulfilled the conditions enabling him to enlist, enrol, or enter, enlists or enrols in any of the auxiliary or reserve forces, or enters the Royal Navy ; or

(*b*) When belonging to the reserve forces, or to any of the auxiliary forces other than the militia, or to the Royal Navy, without having fulfilled the conditions enabling him to enlist or enrol, enlists or enrols in the militia ;

such person, if on service as part of the regular forces at the time when he commits the offence, shall be guilty of fraudulent enlistment, and in any other case shall be guilty of making a false answer ; and for the purposes of this section a person shall be deemed to be on service as part of the regular forces if being a militiaman he is embodied, or if when belonging to the reserve forces he is called out on permanent service, or if when belonging to the yeomanry or volunteers he is on actual military service.

(2.) A person who commits an offence under this section, whether otherwise subject to military law or not, shall be liable as follows ; that is to say :—

(*a*) Be liable to be tried by court-martial, and on conviction to suffer such imprisonment as is imposed, if the offence is

fraudulent enlistment, by section thirteen, and if it is a false answer, by section thirty-three, of the Army Act, 1881 ; or

(*b*) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to imprisonment, with or without hard labour, for any term not less than one month and not more than three months, or to a fine of not less than five pounds and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than one month and not more than the maximum term allowed by law for non-payment of the fine, and in the case of a second or any subsequent conviction to be sentenced to imprisonment, with or without hard labour, for any term not less than two and not more than six months ;

and may in any case be taken into military custody.

(3.) A person who attempts to commit an offence under this section shall, whether otherwise subject to military law or not, be liable to be taken into military custody, tried, convicted, and punished in like manner in all respects as if he had committed an offence under this section, with this qualification, that if he is convicted by court-martial he shall not be liable to any punishment exceeding imprisonment, and if he is convicted by a court of summary jurisdiction this section shall apply as if the terms of imprisonment or amounts of fines were reduced by one-half.

Liability of deserter, absentee, or fraudulent enlister to further service.

27. Any militiaman who is delivered into military custody or committed as a deserter or absentee without leave by a court of summary jurisdiction, or is convicted by court-martial or by a court of summary jurisdiction of desertion or absence without leave or fraudulent enlistment under the Army Act, 1881, or this Act, or is dealt with summarily by his commanding officer for any such offence, shall, whether he is or is not punished for his offence, be liable to serve as follows (that is to say) :—

(*a*) If he has not completed the period of his preliminary training, he shall be liable to attend for preliminary training for the whole of the prescribed period or periods or for the prescribed portion thereof, without any deduction being made for any time he has previously attended for such training (*a*) ; and

(*b*) If the duration of his absence from annual training has amounted in any year to the whole of the time of annual training, or to any part of that time not less than fourteen (*b*) days he shall be liable to serve after the expiration of the term of his militia service for an additional year for each year in which he has been so absent ; and

(*c*) If he was embodied either at the time when he committed the offence or afterwards, he shall be liable to serve for an additional period equal to the time which elapsed between the time of his committing the offence and the time of his apprehension or voluntary surrender ; and the period of such additional service shall commence at the expiration of the term of his militia service or at the time of his apprehension or surrender, whichever last happens (*c*).

(*a*) This subsection does not apply to the yeomanry : see note on s. 14.
(*b*) In the case of a member of the yeomanry, ten days : Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 14), s. 1 (*b*).
(*c*) See Rule 46 [E], and note.

Record of illegal absence of militiaman.

28. (1.) Where a militiaman is subject to military law, and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act, 1881, may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which such man was subject to military law is less than twenty-one days, or has expired before the expiration of twenty-one days.

(2.) Where a militiaman fails to appear at the time and place appointed for preliminary training or for annual training or for assembling on embodiment, and his absence continues for not less than fourteen (*a*) days, his commanding officer shall make an entry in the regimental books of such absence, and such entry shall be conclusive evidence of the fact of such absence.

Lieutenants and Deputy Lieutenants of Counties.

Appointment of lieutenants of counties.

29. Her Majesty shall from time to time appoint lieutenants for the several counties in the United Kingdom.

Appointment, approval, and removal of deputy lieutenants.

30. (1.) The lieutenant of every county shall from time to time appoint such persons as he thinks fit, living within the county, and qualified as provided by this Act, to be his deputy lieutenants.

(2.) In every county twenty persons at least, or if so many persons cannot be found duly qualified, then all the duly qualified persons living within the county, shall, subject as hereinafter mentioned, be appointed deputy lieutenants.

(3.) The lieutenants shall certify to Her Majesty the name of every person whom he proposes to appoint deputy lieutenant, and shall not grant a commission as deputy lieutenant to any person until informed by a Secretary of State that Her Majesty does not disapprove of the granting of such commission.

(4.) Whenever Her Majesty may think fit to signify her pleasure to the lieutenant of any county that all or any of the deputy lieutenants thereof be displaced, such lieutenant shall forthwith displace them, and appoint others in their stead, subject to the provisions of this Act; and a retur of all persons by name who have been appointed deputy lieutenants or have been displaced shall be annually laid before Parliament, made up to the thirty-first day of December, within ten days after Parliament meets.

(5.) The commission of a deputy lieutenant shall not be vacated by the lieutenant who granted it ceasing to be lieutenant.

Provision for absence or disability of lieutenant.

31. Where the lieutenant of a county is absent from the United Kingdom, or by reason of sickness or otherwise is unable to act, or where there is no lieutenant of a county, Her Majesty may authorise any three deputy lieutenants of such county to act as the lieutenant thereof, and such deputy lieutenants while so authorized may do all acts which might lawfully be done by the lieutenant, and shall for all purposes stand in the place of the lieutenant.

Appointment of vice-lieutenant.

32. The lieutenant of a county, with the approbation of Her Majesty, may appoint any deputy lieutenant of the county to act for him as vice-lieutenant during his absence from the county, sickness, or other inability to act; and every such vice-lieutenant, until the appointment is revoked or he is removed by Her Majesty, may from time to time, whenever such absence, sickness, or inability occurs, do all acts which might lawfully be done by the lieutenant, and shall for all purposes stand in the place of the lieutenant, without prejudice to the authority of Her Majesty to make other provisions for this purpose under the foregoing enactment.

(*a*) In the case of a member of the yeomanry, ten days: Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 14), s. 1 (*b*). *See* p. 653.

Qualifications of deputy lieutenants.

33. Every person appointed a deputy lieutenant shall be qualified as follows; that is to say:—

(*a*) He shall be a peer of the realm or the heir apparent of such a peer, and have a place of residence within the county for which he is appointed; or

(*b*) He shall be in possession for his own benefit of an estate for the life of himself or another, or of some greater estate, in land in the United Kingdom of the yearly value of not less than two hundred pounds; or

(*c*) He shall be the heir apparent of some person who is in possession for his own benefit of such an estate as above mentioned; or

(*d*) He shall be possessed or entitled, at law or in equity, in possession for his own benefit, for the life of himself or another, or for some greater interest, of or to a clear yearly income arising from personal estate within the United Kingdom of not less amount than the yearly value of an estate in land above mentioned;

And the clear yearly income arising from any such personal estate shall be admitted in whole or in part of a qualification arising from the possession of an estate in land.

Delivery, enrolment, and return of qualifications and gazetting of commissions.

34. (1.) A person appointed a deputy lieutenant of a county, who is not qualified as a peer or heir apparent of a peer of the realm, shall before acting as deputy lieutenant, deliver to the clerk of general meetings of lieutenancy of that county a specific description in writing, signed by himself, of his qualification, stating where the same consists wholly or partly of an estate in land or of heirship to an estate in land, the county and parish in which the land is situate.

(2.) The clerk of general meetings of lieutenancy shall send to the lieutenant of the county a copy of every such description delivered to him, and shall enter every such description on a roll to be kept for that purpose; and shall (at the cost of the county rate) cause to be published in the London Gazette the names of the persons appointed deputy lieutenants, with the dates of their commissions, in like manner as commissions of officers of Her Majesty's land forces are published.

(3.) The clerk of general meetings of lieutenancy shall from time to time, when so required, send to a Secretary of State a complete account of the several descriptions of qualification delivered to him during the period mentioned in the requisition, and the Secretary of State shall cause copies of every such account to be laid before both Houses of Parliament.

Penalty for acting as deputy lieutenant without being qualified, &c.

35. (1.) If any person acts as deputy lieutenant without being duly qualified, or without having delivered the description of his qualification as required by this Act, he shall forfeit the sum of two hundred pounds; but where such person has been appointed a deputy lieutenant, all acts done by him in the execution of his office shall be as valid as if he had been duly qualified and had duly delivered such description.

(2.) In any legal proceeding for the recovery of any such penal sum the proof of qualification shall lie on the defendant.

Powers, &c., of lieutenants and deputy lieutenants.

36. Except as otherwise provided by this or any other Act, the lieutenant and deputy lieutenants appointed under this Act for any county shall respectively have such jurisdiction, duties, powers, and

privileges as are vested in the lieutenant and deputy lieutenant respectively for such county under any Act of Parliament for the time being in force.

Quotas.

Quotas of Militia.

37. (1.) It shall be lawful for Her Majesty in Council from time to time to appoint the quotas of militiamen to serve for the several counties of the United Kingdom.

(2.) Notice of the quota from time to time appointed for any county shall be transmitted to the lieutenant of that county and published in the London Gazette.

(3.) Such quota shall be the quota of the county until another quota is appointed and notified in like manner.

Civil Rights and Exemptions.

Militia commissions not to vacate seats in Parliament.

38. The acceptance of a commission as a militia officer shall not vacate the seat of any member returned to serve in Parliament.

Attendance of voters at Parliamentary elections.

39. A person in the militia shall not be liable to any penalty or punishment for or on account of his absence during the time he is voting at any election of a member to serve in Parliament, or during the time he is going to or returning from such voting.

Performance of duties of sheriff, if a militia officer, during embodiment.

40. If a sheriff is a militia officer, then during embodiment he shall be discharged from personally performing the office of sheriff, and the under sheriff shall be answerable for the execution of the said office, in the name of the high sheriff; and the security given by the under sheriff, and his pledges to the high sheriff, shall stand a security to the Queen, her heirs and successors, and to all persons whomsoever, for the due performance of the office of sheriff during such time.

Exemption of militiamen.

41. A person in the militia shall not be compelled to serve as a peace officer or parish officer.

Legal Proceedings.

Trial of offences and recovery and application of fines under Militia Acts.

42. (1.) Any offence which under the Militia Acts is punishable on conviction by court-martial shall, for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, 1881, with this modification, that any reference in that Act to forfeitures and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(2.) Every fine or pecuniary forfeiture imposed under any of the Militia Acts, if exceeding the sum of twenty-five pounds, may be recovered by action in Her Majesty's High Court of Justice in England or Ireland, or in the Court of Session in Scotland; and if not exceeding such amount may, so far as the recovery thereof is not otherwise provided for, be recovered on conviction by a court of summary jurisdiction, in like manner as if it were a fine under this Act.

(3.) Any offence which under the Militia Acts is punishable on conviction by or before a court of summary jurisdiction within the meaning of this Act may be prosecuted, and any fine or pecuniary forfeiture which under the Militia Acts is recoverable for any such offence, or is otherwise recoverable before a court of summary jurisdiction, may be recovered in manner provided by sections one hundred and sixty-six and one hundred and sixty-seven of the Army Act, 1881, in like manner as if those sections were herein

re-enacted and in terms made applicable to the Militia Acts, subject to the following modification, namely, every fine or pecuniary forfeiture imposed under any of the Militia Acts on a militiaman, or recovered on a prosecution instituted under any of the Militia Acts by or on behalf of the commanding officer of a militiaman (the application of which is not otherwise provided for by the said Acts), shall, notwithstanding anything in any Act or charter or in the said sections to the contrary, be paid to the commanding officer of the part of the militia to which the militiaman belongs, and shall be accounted for by him in the prescribed manner.

(4.) Save as provided by the said section one hundred and sixty-six, the minimum fixed by any of the Militia Acts for the amount of any fine or forfeiture, or for the term of any imprisonment, shall be duly observed by courts of summary jurisdiction, and shall, notwithstanding anything in any other Act contained, not be reduced by way of mitigation or otherwise.

Provisions as to offences triable both by court-martial and by court of summary jurisdiction.

43. With respect to the trial and punishment of men charged with offences which in pursuance of this Act are cognizable both by a court-martial and by a court of summary jurisdiction, the following provisions shall have effect :—

(1.) An alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either of such courts, according as may be prescribed by orders or regulations under this Act (*a*).

(2.) Proceedings against an alleged offender, when a militiaman, before either a court-martial or his commanding officer, or a court of summary jurisdiction, may be instituted, whether the term of his militia service has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to the commanding officer of the militiaman, if the militiaman is then apprehended, or if he is not then apprehended, then within two months after the time at which he is apprehended, whether such apprehension was by a civil or military authority, and any limitation contained in any other Act with respect to the time for hearing and determining an offence shall not apply in the case of any proceeding so instituted.

(3.) Where an offender has on several occasions been guilty of desertion, fraudulent enlistment, or making a false answer, he may, for the purposes of any proceedings against him, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs ; and it shall be lawful to charge the offender with any number of the above-mentioned offences at the same time, whether they are offences within the meaning of the Army Act, 1881, or offences within the meaning of this Act, and to give evidence of such offences against him, and if he be convicted of more than one offence to punish him accordingly, as if he had been previously convicted of any such offence.

(4.) For the purposes of this section the expression "tried by court-martial" shall include "dealt with summarily by his commanding officer."

Evidence.

44. (1.) Section one hundred and sixty-four of the Army Act 1881 (which relates to evidence of the civil conviction or acquittal of a person subject to military law), shall apply to a militiaman who is

(*a*) He is not to be tried by a court of summary jurisdiction without the written sanction of his commanding officer, or an authority superior to that officer. Militia Regulations, para. 111, and Yeomanry Regulations, para. 97.

tried by a civil court, whether he is or is not at the time of such trial subject to military law.

(2.) Section one hundred and sixty-three of the Army Act, 1881 (relating to evidence), shall apply to all proceedings under the Militia Acts.

Miscellaneous.

Militia returns, how to be made.

45. All returns required or authorized to be made in relation to the militia by any of the Militia Acts shall be made to such persons as may be prescribed.

Protection of persons acting under Militia Acts.

46. (1.) The law relating to the protection of justices of the peace in the execution of their office shall, save as regards limitation of actions, notice of action, venue, tender of amends and payment into court, and other matters relating to actions which are provided for by this section, apply to lieutenants and deputy lieutenants when acting in the execution of the Militia Acts, as if they were included in the expression "justices of the peace."

(2.) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of the Militia Acts, or in respect of any alleged neglect or default in the execution of those Acts, shall not lie or be instituted unless it is commenced within twelve (*a*) months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within twelve (*a*) months next after the ceasing thereof.

(3.) In any such action, tender of amends before the action was commenced may in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(4.) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in one of Her Majesty's superior courts in the United Kingdom.

Exercise of powers vested in holder of military office.

47. (1.) Any power or jurisdiction given to, and act or thing to be done by, to, or before any person holding any military office may in relation to the militia be exercised by or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service.

(2.) Where by any of the Militia Acts, or by any order or regulation in force under this Act, any order is authorized to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorized to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

Provisions as to special Localities.

Provisions as to counties for purposes of Militia Acts.

48. For the purposes of the Militia Acts the following provisions shall have effect with respect to counties:—

(*a*) This period has been reduced to six months by the Public Authorities Protection Act, 1893 (56 and 57 Vict., c. 61); and see further as to the effect of that Act on this section the note to para. 102 of ch. VIII.

(1.) The expression "county" shall, unless the context otherwise requires, mean a county at large, with the exception that each riding of the county of York shall be a separate county.

(2.) Each county of a city, county of a town, or place mentioned in the first column of the first schedule to this Act, shall be deemed to form part of the county set opposite thereto in the second column of that schedule, and where a parish is mentioned in that second column to form part of that parish.

(3.) All other places locally situate within a county as above defined shall be deemed to form part of that county.

(4.) Every place declared by this section to form part of a county shall (save as otherwise expressly provided) be subject to the jurisdiction and authority of the lieutenant, deputy lieutenants, and other officers of the said county.

Application of Militia Acts to certain places: Isle of Wight.

49. The Militia Acts shall apply to the following places, with the modifications hereinafter mentioned:

(1.) The Governor of the Isle of Wight may appoint to act for him in the island five or more deputies, in like manner and subject to the like conditions and restrictions as deputy lieutenants are appointed under this Act, and such deputies shall act in the execution of the Militia Acts as if they were deputy lieutenants; the militia of the Isle of Wight shall be raised in the same manner as and shall form part of the militia of the county of Southampton; but shall remain within the said isle as an internal defence thereof, unless Her Majesty otherwise orders.

Tower Hamlets.

(2.) The Militia Acts shall apply to the liberty or district of the Tower Division in the county of Middlesex, commonly known by the name of the Tower Hamlets, as if it were a separate county.(*a*)

Cinque Ports.

(3.) This Act shall apply to the Cinque Ports, two ancient towns, and their members, so far as is consistent with the special enactments relating thereto as if they were a separate county, and the Warden of the Cinque Ports were the lieutenant of that county.

Haverfordwest.

(4.) It shall be lawful for Her Majesty to appoint a lieutenant for the county of the town of Haverfordwest in like manner as if it were a separate county, and he may appoint deputy lieutenants under this Act.

Miners of Cornwall and Devon.

(5.) A corps of miners may continue to be raised for the counties of Cornwall and Devon as part of the militia, and the Militia Acts shall apply in like manner as if such corps were the militia of a separate county, and the warden of the Stannaries were the lieutenant of that county, and the quota for such corps may be fixed accordingly. The deputies appointed by the warden shall be called deputy wardens of the Stannaries, and need not exceed twelve in number, and the persons appointed shall be qualified, in respect of residence and otherwise, as if they were appointed deputy lieutenants for a county comprising the counties of Cornwall and Devon, and any reference to the clerk of general meetings of lieutenancy shall be deemed to refer to the clerk of general meetings appointed by the warden.

Application of Act to City of London.

50. The city of London shall continue to be a separate county for the purposes of the militia, and so far as is consistent with the special enactments relating to such city this Act shall apply accordingly; and the Commissioners of Lieutenancy of the city shall, for the purposes of this Act and those enactments, be the lieutenant of the county; and the provisions of this Act with

(*a*) See above p. 164, note (*e*).

respect to deputy lieutenants shall not apply to the said city; and nothing in this Act shall affect the raising and levying of the trophy tax as heretofore in the said city.

Definitions.

Definitions.

51. In this Act, unless the context otherwise requires,—

The expression "parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

The expression "militia" means the regular militia raised in the United Kingdom, or in any county or part thereof:

The expressions "militiaman" and "man in the militia" include respectively a non-commissioned officer:

The expression "term of militia service" means in the case of a man enlisted or re-engaged under this Act the term for which he has so enlisted or re-engaged, and in case of any other man the term for which he is enrolled:

The expression "Militia Acts" means this Act, and any Act passed or hereafter to be passed relating to the militia, so far as it is for the time being in force:

The expression "prescribed" means prescribed by orders or regulations in force under this Act.

Expressions not above in this section mentioned have, unless the context otherwise requires, the same meaning as they have in the Army Act, 1881.

Application of Act to Scotland.

Modifications in application of Act to Scotland.

52. In the application of this Act to Scotland the following modifications shall be made: that is to say:—

(1.) The Militia Acts shall apply to the county of the city of Edinburgh in like manner as to any other county, and the chief magistrate of that city shall, when there is no lieutenant appointed, appoint the deputy lieutenants under this Act.

(2.) The expression "land" includes heritages.

(3.) The expression "county rate" means "county general assessment."

(4.) The expression "overseer" means "inspector of the poor"

(5.) In the provisions respecting an action, prosecution, or proceeding against any person, "plaintiff" shall mean "pursuer," and "defendant" shall mean "defender," and "solicitor" shall mean "law agent."

Application of Act to Ireland.

Modifications in application of Act to Ireland.

53. In the application of this Act to Ireland, the following modifications shall be made; that is to say:—

(1.) The Militia Acts shall apply to the counties of the cities of Dublin, Cork, and Limerick respectively in like manner as to any other county.

(2.) Lieutenants may be appointed for the county of the city of Waterford and the town and county of the town of Galway respectively in like manner as if such city and town were respectively separate counties, and such lieutenants may appoint deputy lieutenants under this Act (*a*).

(3.) As regards the qualifications of deputy lieutenants, the

(*a*) Sub section (2) is repealed as to Galway by the Local Government (Ireland) Act, 1898 (51 & 52 Vict. c. 37), s. 110 (2).

description shall state the denomination of any land forming the whole or part of the qualification, and in the case of any such city or town as above in this section mentioned, the town clerk shall be substituted for the clerk of general meetings of lieutenancy, and the borough rate shall be substituted for the county rate.

(4.) The powers vested in Her Majesty with reference to lieutenants and their deputy lieutenants and vice-lieutenants may, subject to any direction of Her Majesty, be exercised by the Lord Lieutenant of Ireland, and anything in relation to lieutenants or deputy lieutenants, if authorized or required to be done by, to, or before Her Majesty, may, subject as aforesaid, be done by, to, or before the Lord Lieutenant, and if authorized or required to be done by or to a Secretary of State, may be done by or to the Chief Secretary or Under Secretary of the Lord Lieutenant.

(5.) The number of deputy lieutenants in each county and in each such city or town as above mentioned shall be such as Her Majesty, or, subject to any direction of Her Majesty, the Lord Lieutenant from time to time determines.

(6.) Anything required to be published in the London Gazette shall be published in the Dublin Gazette in lieu of the London Gazette.

(7.) Except as otherwise provided by this or any other Act, the lieutenants and deputy lieutenants appointed under this Act for any county, city, or town shall respectively have all the powers which by any Act for the time being in force are vested in the governors or deputy governors respectively of counties or places in Ireland.

(8.) . . . . (*a*).

(9.) The expression "rate" includes "cess."

(10.) The constables shall perform the duties of overseers with respect to the publication of notices.

Repeal.

54. . . . (*a*).

Repeal of Acts.

(1.) So much of the said Acts as is set out in the third schedule to this Act shall continue in force in manner therein appearing, as if the same were enacted in the body of this Act.

(2) . . . . (*a*).

(3.) All commissions and appointments in relation to the militia which exist at the commencement of this Act shall be of the same effect as if granted or made under this Act.

(4.) All orders, warrants, regulations, and directions in relation to the militia which exist at the commencement of this Act shall be of the same effect as if they were orders and regulations made under this Act, and may be revoked or altered accordingly.

(5.) The quota in force at the commencement of this Act for any county, or for any place which is under this Act deemed to be a county, shall continue to be the quota appointed for that county or place until another quota is appointed under this Act.

(6.) The several militiamen who before the commencement of this Act have been attested for service, whether before a justice of the peace or an officer, or have been re-engaged, shall be deemed to have been duly attested and re-engaged as if they had been enlisted or re-engaged under this Act, and shall continue to serve accordingly, and shall be subject to and be deemed to be raised under this Act, and their service before the commencement of this

(*a*) Repealed, Stat. Law Rev. Act, 1898.

Act shall be reckoned as if the same had taken place under this Act.

(7.) A member of the permanent staff of the militia who has been enlisted or re-engaged in pursuance of any enactment hereby repealed shall continue to serve in like manner as if the said enactment had not been repealed.

(8.) Where a member of the permanent staff of the militia or a militiaman was enlisted or re-engaged before the passing of the Regulation of the Forces Act, 1881, or before the date of any order or regulation made under the said Act, nothing in the said Act, order, or regulation, or in this Act shall render such member or man liable without his consent to serve in or be appointed, transferred, posted, or attached to any military body in or to which he could not have been required without his consent to serve or be appointed, transferred, or attached if the Regulation of the Forces Act, 1881, or this Act, or the said order or regulation as the case may be, had not been passed or made.

(9.) . . . . (*a*).

(10.) Any unrepealed enactment referring to any provisions hereby repealed, or to any provisions repealed by the Militia (Voluntary Enlistment) Act, 1875, shall be construed as referring to the corresponding provisions of this Act.

SCHEDULES.

First Schedule.

The following places are for the purposes of the Militia Acts to be included in the following counties.

England.

See 42 Geo. 3, c. 90, ss. 19, 149, 151, 38 & 39 Vict. c. 69, ss. 2, 80.	County of the city of Chester	Chester.
	County of the city of Exeter	Devon.
	County of the town of Poole	Dorset.
	County of the city of Gloucester	Gloucester.
	County of the city of Bristol	Gloucester.
	County of the city of Canterbury	Kent.
	County of the city of Lincoln	Lincoln.
	County of the city of Norwich	Norfolk.
	County of the town of Newcastle-upon-Tyne	Northumberland.
	Borough and town of Berwick-upon-Tweed	Northumberland.
	County of the town of Nottingham	Nottingham.
	County of the town of Southampton	Southampton.
	County of the city of Lichfield	Stafford.
	County of the city of Worcester	Worcester.
	County of the city of York	West Riding of York.
	County of the town of Kingston-upon-Hull	East Riding of York.
	County of the town of Carmarthen	Carmarthen.

(*a*) Repealed, Stat. Law Rev. Act, 1898.

County of the town of Haverfordwest	Pembroke.
The constabulary of Craike	North Riding of York.
That part of the parish of Maker which lies in the county of Cornwall	Cornwall.
Town and parish of Wokingham	Berks.
The township of Filey	East Riding of York.
Threapwood	Parish of Worthenbury in Flint.
Parish of Saint Martin, called Stamford Baron, in the suburbs of the borough and town of Stamford on the south side of the waters called Welland	Lincoln.

Ireland (*a*).

County of the city of Waterford....	Waterford.	See 49 Geo. 3, c. 120, s. 2, 38 & 39 Vict. c. 69. ss. 2, 3.
. . . . .		
County of the town of Londonderry	Londonderry.	
. . . . .		

Second Schedule.

Acts Repealed.

[Repealed, Stat. Law Rev. Act, 1898.]

Third Schedule.

Local Militia.

Enactments re-enacted with respect to Local Militia.

33 & 34 Vict. c. 67, s. 20.

A Secretary of State may require the chief officer of police in every district in the United Kingdom to cause to be served within his district any notice which the Secretary of State may desire to be served on any member of the local militia in such district; and all officers and men of every police force shall conform to the orders of a Secretary of State in relation to the service of such notices given through such chief officer. Service of notices on local militia.

34 & 35 Vict. c. 86, s. 6.

(1.) All jurisdiction, powers, duties, command, and privileges over, of, or in relation to the local militia, or any part thereof, which, under any Acts other than this Act, are vested in or exercisable by the lieutenants of counties, shall be exercisable by Her Majesty through a Secretary of State, or any officers to whom Her Majesty may, by and with the advice of a Secretary of State, delegate such jurisdiction, powers, duties, command, and privileges, or any of them, or any part thereof; saving nevertheless to the Jurisdiction of Her Majesty in relation to the local militia.

(*a*) This Schedule is repealed so far as relates to Kilkenny, Drogheda, and Galway, by the Local Government (Ireland) Act, 1898 (51 and 52 Vict. c. 37), s. 110 (2).

lieutenants of counties their jurisdictions, powers, duties, and privileges in relation to raising the local militia by ballot, and the proceedings incidental thereto.

(2.) All officers in the local militia shall be appointed by and hold commissions from Her Majesty; such commissions shall be prepared, authenticated, and issued in the manner in which commissions of officers in Her Majesty's land forces are prepared, authenticated, and issued, according to any law or custom for the time being in force.

(3.) First appointments to the lowest rank of officer in any corps of local militia shall be given to persons recommended by the lieutenant of the county to which the corps belongs, if a person approved by Her Majesty is recommended by such lieutenant or any such appointment within thirty days after notice of a vacancy for such appointment has been given to such lieutenant by a Secretary of State, which notice may be given by a letter addressed to him by post.

34 & 35 Vict. c. 86, s. 7.

Number of local militia.

The local militia shall consist of such number of men as may from time to time be provided by Parliament.

34 & 35 Vict. c. 86, s. 8.

Training for militia.

Men enrolled in the local militia shall attend at the headquarters of the corps in which they are enrolled, or at such other place and at such times as may be directed by a Secretary of State, for preliminary instruction for a period of not more than six months.

34 & 35 Vict. c. 86, s. 14.

Returns in relation to the local militia.

All returns required or authorized to be made in relation to the local militia by any Act for the time being in force shall be made to such persons as may be prescribed by a Secretary of State.

34 & 35 Vict. c. 86, s. 19.

In this schedule, if not inconsistent with the context,—

The expression "lieutenant of a county," includes a vice-lieutenant, also the Governor of the Isle of Wight, the Warden of the Cinque Ports, the Warden of the Stannaries, the Constable of the Tower, and any other officer or officers however named having a jurisdiction in relation to the local militia similar to that of lieutenant, or lieutenants, or deputy-lieutenants of a county.

The Reserve Forces and Militia Act, 1898.

[61 & 62 Vict. c. 9.]

Extract from (*a*).

An Act to amend the Law relating to the Reserve Forces and Militia. [1st July, 1898.]

Amendment of law as to voluntary service of Militia

2. Section twelve of the Militia Act, 1882, shall have effect as if the words "any place out of the United Kingdom" were substituted therein for the words "the island of Guernsey, Jersey, Alderney,

(*a*) The rest of this Act deals with the Reserve Forces; see p. 631.

and Sark, the Isle of Man, Malta, and the garrison of Gibraltar or any of them," and shall be construed as authorising the employment of any member of the Militia volunteering to serve for a period not exceeding one year whether an order embodying the Militia is in force or not at the time. outside the United Kingdom, 45 and 46 Vict., c. 49.

3. The number of men for the time being employed under this Act shall not be reckoned in the number of the forces authorised by the Army Act for the time being in force. Provision as to numbers authorised by Army Act.

Militia and Yeomanry Act, 1901.

[1 Edw. 7, c. 14.]

An Act to amend the Law relating to the Militia and Yeomanry.
[17th August, 1901.]

1. The enactments relating to the general militia shall apply to all members of the yeomanry receiving commissions or enlisted after the passing of this Act, as if references therein to the militia and members thereof were references to the yeomanry and members thereof, subject to the following modifications, namely :— Application of Militia Acts to Yeomanry.

(*a*) The provisions with respect to preliminary training shall not apply ;

(*b*) For the period of annual training specified in Section sixteen of the Militia Act, 1882, shall be substituted a period of not less than fourteen nor more than eighteen days in every year, and for the period of fourteen days referred to in Sections twenty-seven and twenty-eight of the same Act shall be substituted a period of ten days.

2. The period of annual training for militia men enlisted after the passing of this Act, and for the time being serving in the mobile militia artillery, shall be such period, not exceeding eighty-four days, as may be prescribed under the Militia Act, 1882. Annual training of militia artillery.

3. This Act may be cited as the Militia and Yeomanry Act, 1901. Short title.

Militia and Yeomanry Act, 1902.

[2 Edw. 7, c. 39.]

An Act to amend the Law relating to the Militia and Yeomanry.
[18th December, 1902.]

1. (1) For the purpose of forming reserve divisions of the militia and yeomanry, the Secretary of State may, by regulations, relax or dispense with the provisions of any enactment in any existing Act of Parliament relating to the training of militia and yeomanry, so far as regards their application to men in the reserve divisions, and any man in a reserve division may be transferred, by the competent military authority within the meaning of Part II of the Army Act, from one corps of militia or yeomanry to another, so, however, that a militiaman or yeoman shall not, without his consent, be transferred to a corps of another arm. Amendment of law relating to militia and yeomanry

(2) All regulations made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made,

if Parliament be then sitting; and if Parliament be not sitting, as soon as practicable after the beginning of the next session of Parliament.

(3). Sections three and four of the Militia Act, 1882, relating to maintenance and government of the militia, shall apply to yeomanry.

Short title. 2. This Act may be cited as the Militia and Yeomanry Act, 1902.

Volunteer Act, 1863.

[26 & 27 Vict., c. 65.]

An Act to consolidate and amend the Acts relating to the Volunteer Force in Great Britain. [21st July, 1863.]

Short title. 1. This Act may be cited as the Volunteer Act, 1863.

PART I.—Organisation of Volunteer Force.

Acceptance of Service.

Power to the Crown to accept services through Lieutenants of Counties. 2. It shall be lawful for Her Majesty to accept the services of any persons desiring to be formed under this Act into a Volunteer corps, and offering their services to Her Majesty through the Lieutenant of a County. (*a*)

On such acceptance the proposed corps shall be deemed lawfully formed under this Act as a corps of that county.

Permanent Staff.

Power to the Crown to form a permanent staff. 3. Her Majesty may from time to time constitute for any Volunteer corps a permanent staff, consisting of an adjutant commissioned by Her Majesty, and of so many serjeant-instructors as may seem fit, engaged and attested (according to regulations under this Act) for a period not exceeding five years, or of such an adjutant, or of such serjeant-instructors, alone.

[For the purposes of this Act, all such adjutants shall be deemed officers of the respective corps, and all such serjeant-instructors shall be deemed to belong to the respective corps, on the permanent staff whereof they serve, and shall be deemed respectively officers and non-commissioned officers of the Volunteer permanent staff; but nothing in this Act shall be taken to exempt any officer or non-commissioned officer of the permanent staff of a Volunteer corps from being subject to the orders of the officers of the corps, according to their rank and the laws and usages of Her Majesty's forces (*b*).]

. . . . . .

Officers and Volunteers.

4. [Repealed, Stat. Law Rev. Act, 1875.]

5. Officers of the Volunteer Force shall rank with officers of Her Majesty's Regular and Militia Forces as the youngest of their respective ranks, and shall rank with officers of the Yeomanry Force according to the rank and date of their respective commissions in the respective forces.

(*a*) *See* Regulation of the Forces Act, 1871, s. 6, above, p. 617.

(*b*) The words in brackets were repealed by 44 & 45 Vict. c. 57, s. 54, so far as relates to such portion of the permanent staff as are included in any corps of the Regular Forces within the meaning of that Act. The rest of the section was repealed absolutely by the same Act.

The acceptance of a commission in the Volunteer Force by a Member of the Commons House of Parliament shall not render his seat vacant. As to members of H.C. accepting commissions.

6. Every officer shall, on receiving his commission, and every Volunteer shall, on his enrolment in the muster roll of his corps, or, in either case, as soon afterwards as may be, take the oath set forth in the schedule to this Act, to be administered by the lieutenant of the county to which the corps belongs, or by a deputy-lieutenant or Justice of the Peace for the county, or by an officer of the corps who has taken such oath. Oath to be taken as in Schedule.

7. Any Volunteer may, except when on actual military service, quit his corps on complying with the following conditions, namely :— Power for Volunteer to quit his corps on conditions herein stated.

(1.) Giving to the commanding officer of his corps fourteen days notice in writing of his intention to quit the corps ;

(2.) Delivering up in good order, fair wear and tear only excepted, all arms, clothing, and appointments, being public property or property of his corps, issued to him ;

(3.) Paying all money due or becoming due by him, under the rules of his corps, either before or at the time, or by reason of his quitting it ;

and thereupon he shall be struck out of the muster roll of the corps by the commanding officer.

If any Volunteer give such notice, and the commanding officer refuses to strike him out of the muster roll, and the Volunteer considers himself aggrieved thereby, the Volunteer may appeal to two Justices of the Peace for the county to which the corps belongs, usually acting within the Petty Sessional Division in which the head-quarters of the corps are situate, and not being members of the corps, who shall hear and determine the appeal, and may, for the purposes thereof, administer oaths and examine any person as a witness ; and if it appears to such Justices that the arms, clothing, and appointments issued to the Volunteer, being public property or property of his corps, have been delivered up in good order (fair wear and tear only excepted), or that he has paid, or is ready to pay, sufficient compensation for any damage that such articles may have sustained, and that all money due, or becoming due, by him under the rules of his corps, either before or at the time, or by reason of his quitting it, has been paid, such Justices may order the commanding officer forthwith to strike such Volunteer out of the muster roll of his corps, and their determination shall be binding on all persons.

8. If any Volunteer enrols himself as a Volunteer or substitute in the Militia, or is attested to serve on the permanent staff thereof, or enlists in Her Majesty's Army, he shall be deemed discharged from the Volunteer Force, and the commanding officer of his corps shall strike him out of the muster roll thereof. As to discharge of Volunteer taking service in Militia or Army.

He shall, nevertheless, be liable to deliver up in good order, fair wear and tear only excepted, all arms, clothing, and appointments, being public property or property of his corps, issued to him, and to pay all money due or becoming due by him, under the rules of his corps, either before or at the time, or by reason of his discharge. If such arms, clothing, and appointments are not so delivered up by him, or such money is not paid by him, then, without prejudice to any proceeding or remedy against him under this Act, he may, under an order of one of Her Majesty's Principal Secretaries of State, if it seems fit, be put under stoppages out of any bounty

or pay receivable by him, or both, until the value of such arms, clothing, or appointments not so delivered up, or such money (as the case may be), is fully paid.

General Command.

9. [Repealed, 44 & 45 Vict. c. 57.]

Inspection.

Annual inspection.

10. An annual inspection of every Volunteer corps shall be held by a general or field officer of Her Majesty's Army.

Efficiency.

Requisites of efficiency to be declared by Order in Council.

11. Her Majesty in Council may from time to time declare what is requisite to entitle a Volunteer to be deemed an efficient Volunteer, by an Order in Council defining, for that purpose, the extent of attendance at drill to be given by the Volunteer, and the course of instruction to be gone through by him, and the degree of proficiency in drill and instruction to be attained by him and his corps, such proficiency to be judged of by the inspecting officer at the annual inspection of the corps, or otherwise, as by Order in Council is from time to time directed.

The draft of any scheme to be from time to time submitted to Her Majesty in Council for approval under the present section shall have been laid before both Houses of Parliament for one lunar month at least, either before or after or partly before and partly after the passing of this Act, during the present or for the like period during any subsequent Session of Parliament, before such scheme receives the approval of Her Majesty in Council.

Disbanding of Corps.

Power to the Crown to disband corps.

12. Her Majesty may disband or discontinue the services of any Volunteer corps, or any part thereof, whenever it seems to Her Majesty expedient to do so.

Existing Corps.

Power to the Crown to continue services of corps already formed.

13. It shall be lawful for Her Majesty to continue the services of all Volunteer corps whose services have been accepted before the passing of this Act; and the services of every such corps shall be deemed to be continued by Her Majesty unless and until Her Majesty thinks fit to exercise the power of disbanding or discontinuing the services of the corps.

The provisions of this Act shall apply to every such corps, as if its services were accepted under this Act, without prejudice to anything already done in relation to or by any such corps.

Administrative Organisation.

Power to Crown to appoint a permanent staff on formation of administrative regiments.

(*a*) 14. Where two or more separate Volunteer corps are formed by the authority of one of Her Majesty's Principal Secretaries of State into a united body for military or administrative purposes, hereinafter called an administrative regiment, Her Majesty may from time to time constitute for such regiment a permanent staff consisting of an adjutant commissioned by Her Majesty, and of so many serjeant-instructors as may seem fit, engaged and attested (according to Regulations under this Act) for a period not exceeding

(*a*) As to consolidation of corps, *see* Regulation of the Forces Act, 1881 (44 & 45 Vict. c. 57), s. 9, below, p. 667.

five years, or of such an adjutant, or of such serjeant-instructors, alone.

[For the purposes of this Act all such adjutants shall be deemed officers of the respective administrative regiments, and all such serjeant-instructors shall be deemed to belong to the respective administrative regiments, on the permanent staff whereof they serve, but not to be officers of or to belong to any of the separate corps formed into those regiments, and shall be deemed respectively officers and non-commissioned officers of the Volunteer permanent staff; but nothing in this Act shall be taken to exempt any officer or non-commissioned officer of the permanent staff of such a regiment from being subject to the orders of the officers of the regiment and of the separate corps formed into the same, according to their rank, the laws and usages of Her Majesty's forces, and any regulations under this Act (*a*).]

Notwithstanding the formation of any such regiment, the separate corps formed into the same shall be severally deemed Volunteer corps for all the purposes of this Act.

Courts of Inquiry.

Lieutenant of County may assemble court of inquiry, to report to the Lieutenant or the Commanding Officer.

15. The lieutenant of the county to which a Volunteer corps belongs, or within whose jurisdiction the head-quarters of an administrative regiment are situate, may at any time assemble a Court of Inquiry to inquire into any matter relative to the corps or regiment, or to any officer or Volunteer or non-commissioned officer of the permanent staff belonging thereto, and to record the facts and circumstances ascertained on such inquiry, and, if required, to report on the same, for the information and assistance of such lieutenant; such court, where the inquiry is with reference to an officer, to be composed of officers of the Volunteer Force belonging to the county, and in other cases to be composed either of officers and Volunteers belonging to the corps or regiment, or of such officers, or of such Volunteers.

The commanding officer of a Volunteer corps or administrative regiment may at any time assemble a Court of Inquiry, composed either of officers and Volunteers belonging to the corps or regiment, or of such officers, or of such Volunteers, to inquire into any matter relative to the corps or regiment, or to any Volunteer or non-commissioned officer of the permanent staff belonging thereto, and to record the facts and circumstances ascertained on such inquiry, and, if required, to report on the same, for the information and assistance of the commanding officer; but nothing herein shall authorise any inquiry with reference to an officer otherwise than by a court assembled by direction of such lieutenant of the county as aforesaid, and composed exclusively of officers of the Volunteer Force belonging to such county.

Regulations.

Power to Secretary of State to make regulations for government of Volunteer Force.

16. One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting anything in this Act directed or authorised to be done or provided by regulation, and also such regulations as may seem fit (not being inconsistent with any of the provisions of this Act) respecting—

the appointment and promotion of officers; and

(*a*) See note (*l*) on p. 654.

the assembling and proceedings of courts of inquiry to inquire into and report on any matter connected with the government or discipline of a Volunteer corps or administrative regiment;

and for the full execution of this Act, and the general government and discipline of the Volunteer Force, and may alter or repeal any such regulations; and may call for such returns as may from time to time seem requisite.

PART II (*a*).—ACTUAL MILITARY SERVICE.

In case of invasion, power to the Crown to call out Volunteers for actual military service.

17. In case [of imminent national danger or of great emergency (*b*)] (the occasion being first communicated to both Houses of Parliament if Parliament is sitting, or declared in Council and notified by proclamation if Parliament is not sitting), Her Majesty may direct the (*c*) lieutenants of counties throughout Great Britain, or such of them as Her Majesty may judge necessary, to call out the Volunteer corps of their respective counties, or any of them, for actual military service.

Every officer and Volunteer and every non-commissioned officer of the permanent staff belonging to every corps so called out shall be bound to assemble as the lieutenant of the county directs, and to march according to orders, within Great Britain; and, from the time of his corps being so called out, shall, for the purposes of this Act, be deemed on actual military service. If any such officer, Volunteer, or non-commissioned officer, not incapacitated by infirmity for military service, refuses or neglects to so assemble or march, he shall be deemed a deserter.

Allowances to Volunteer corps so called out.

18. Whenever a Volunteer corps is called out for actual military service, the following provisions shall take effect:—

(1.) There shall be issued, in manner provided by regulation, the sum of two guineas for the use of every officer and Volunteer and non-commissioned officer of the permanent staff belonging to and assembling with the corps (except such of them as do not desire to receive the benefit thereof); and each such sum, or so much thereof as the commanding officer of the corps think fit, shall be laid out, under the direction of the commanding officer, in providing necessaries for each such officer, Volunteer, and non-commissioned officer; and within one month after receipt thereof, an account shall be settled with each such officer, Volunteer, and non-commissioned officer, respecting the application thereof, and any unapplied residue thereof shall be paid to him;

(2.) Such officers, Volunteers, and non-commissioned officers shall be entitled to receive pay . . . . . as the officers, non-commissioned officers, and soldiers of Her Majesty's army . . . . .

(*a*) This part applies in the case of any part of a Volunteer corps in like manner as it applies in the case of a whole Volunteer corps. See the Volunteer Act, 1895 (58 & 59 Vict., c. 23), below, p. 668. See the Volunteer Act, 1900 (63 & 64 Vict. c. 39) as to power of Volunteers to enter into special agreements as to service, below, p. 669.

(*b*) Words in brackets substituted by the Volunteer Act, 1900, 63 & 64 Vict. c. 39, s. 1.

(*c*) See Regulation of the Forces Act, 1871, s. 6, above p. 617.

(3.) On the release of the corps from actual military service there shall be paid, in manner provided by regulation, one guinea to every such officer, Volunteer, and non-commissioned officer present with the corps at the time of such release (except such of them as do not desire to receive the same), in addition to his pay.

Order of release of corps from actual military service.

19. After a Volunteer corps has been called out for actual military service, the corps shall be deemed released from actual military service only by an order in writing, signed by the(*a*) lieutenant of the county to which the corps belongs, and addressed and delivered to the commanding officer of the corps; which order the lieutenant of the county shall issue upon and as soon as may be after a proclamation of Her Majesty declaring the occasion to have passed, and not sooner or otherwise.

Before a Volunteer corps is released from actual military service, the corps shall be returned to the county to which it belongs.

Provision for officers and men disabled, and for widows of officers killed.

20. An officer of the Volunteer Force disabled on actual military service shall be entitled to half pay, according to his rank; and the widow of such an officer killed on actual military service shall be entitled to the like pension for life as the widow of an officer of Her Majesty's Army.

A Volunteer or non-commissioned officer of the Volunteer permanent staff, disabled on actual military service, shall, according to his rank, be entitled to the like pension and other benefits, if any, as a soldier of Her Majesty's Army.

PART III.—Discipline.

Officers and Volunteers.

As to discipline of Volunteers while not on actual military service.

21. With respect to the discipline of officers (other than officers of the Volunteer permanent staff) and Volunteers, the following provisions shall take effect and be in force while they are not on actual military service:—

(1.) The commanding officer of a Volunteer corps may discharge from the corps any Volunteer, and strike him out of the muster roll, either for disobedience of orders by him while doing any military duty with his corps, or for neglect of duty, or misconduct by him as a member of the corps, or for other sufficient cause, the existence and sufficiency of such causes respectively to be judged of by the commanding officer. The Volunteer so discharged shall, nevertheless, be liable to deliver up in good order, fair wear and tear only excepted, all arms, clothing, and appointments, being public property or property of his corps, issued to him, and to pay all money due or becoming due by him, under the rules of his corps, either before or at the time or by reason of his discharge. But nothing herein shall prevent Her Majesty from signifying her pleasure in such manner, and giving such directions with respect to any such case of discharge as to Her Majesty may appear just and proper;

(2.) If any such officer as aforesaid or any Volunteer, while under arms or on march or duty with the corps or administrative regiment to which he belongs, or any

(*a*) See Regulation of the Forces Act, 1871, s. 6, above p. 617.

portion thereof, or while engaged in any military exercise or drill with such corps or regiment, or any portion thereof, or while wearing the clothing or accoutrements of such corps or regiment, and going to or returning from any place of exercise or assembly of such corps or regiment, disobeys any lawful order of any officer under whose command he then is, or is guilty of misconduct, the officer then in command of the corps or regiment, or any superior officer under whose command the corps or regiment then is, may order the offender, if an officer, into arrest, and if not an officer, into the custody of any Volunteer belonging to the corps or regiment or of any non-commissioned officer of the Volunteer permanent staff, but so that the offender be not kept in such arrest or custody longer than during the time of the corps or regiment, or such portion thereof as aforesaid, then remaining under arms or on march or duty, or assembled or continuing engaged in any such military exercise or drill as aforesaid.

22. } [Repealed, 44 & 45 Vict. c. 57.]
23. }

PART IV.—Rules and Property of Corps.

Power for corps to make rules, subject to the approval of the Crown.

24. The officers and Volunteers belonging to a Volunteer corps may from time to time make rules for the management of the property, finances, and civil affairs of the corps (*a*) and may alter or repeal any such rules; but any such rules shall not have effect unless and until the commanding officer of the corps thinks fit to transmit the same to the lieutenant of the county to which the corps belongs, and such lieutenant thinks fit to submit the same for Her Majesty's approval, and such approval, signified through one of Her Majesty's Principal Secretaries of State, is notified by such lieutenant to the commanding officer of the corps, to be by him forthwith communicated to the corps; whereupon the rules so approved shall be binding on all persons.

A copy of the rules in print or writing, or partly in print and partly in writing, certified under the hand of the commanding officer as a true copy of the rules whereof Her Majesty's approval has been notified as aforesaid, shall be conclusive evidence of the rules of the corps.

Vesting of property of corps in commanding officer *ex officio*.

25. All money subscribed by or to or for the use of a Volunteer corps or administrative regiment, and all effects belonging to any such corps or regiment, or lawfully used by it, not being the property of any individual officer or Volunteer or non-commissioned officer of the Volunteer permanent staff belonging to the corps or regiment and the exclusive right to sue for and recover current subscriptions arrears of subscriptions, and other money due to the corps or regiment, and all lands acquired by the corps or regiment shall vest in the commanding officer of the corps or regiment for the time being, and his successors in office, with power for him and his successors to sue, to make contracts and conveyances, and to do all other lawful things relating thereto; and any civil or criminal proceeding taken by virtue of the present section by the command-

(*a*) The power to make rules under this section extends to making rules for securing efficiency. See the Volunteer Act, 1897 (60 & 61 Vict. c. 47), below, p. 668.

ing officer of a corps or regiment shall not be discontinued or abated by his death, resignation, or removal from office, but may be carried on by and in the name of his successor in office.

Appointment of storehouses for arms.

26. The commanding officer of a Volunteer corps or administrative regiment, receiving any arms, ammunition, or other stores supplied at the public expense or by subscription, shall, subject to the approval of the lieutenant of the county to which the corps belongs, or in which the headquarters of the administrative regiment are situate (as the case may be), appoint a proper storehouse for the depositing and safe keeping of such arms, ammunition, or stores. Every such storehouse shall be free from all county, parochial, or other local rates and assessments.

Recovery of subscriptions or fines.

27. If any person belonging or having belonged to a Volunteer corps or administrative regiment neglects or refuses to pay any money subscribed or undertaken to be paid by him towards any of the funds or expenses of such corps or regiment, or due under the rules of such corps, and actually payable by him, or to pay any fine incurred by him under the rules of such corps—such money or fine shall (without prejudice to any other remedy) be recoverable from him, with costs, at any time within twelve months after the same becomes due and payable, as a penalty under this Act is recoverable, and when recovered shall be applied as part of the general fund of the corps or regiment (*a*).

Wrongful sale, non-delivery, &c., of public or corps property.

28. If any person designedly makes away with, sells, pawns, wrongfully destroys, wrongfully damages, or negligently loses, any thing issued to him as a Volunteer or wrongfully refuses or wrongfully neglects to deliver up, on demand, any thing issued to him as a Volunteer, the value thereof shall be recoverable from him, with costs, as a penalty under this Act is recoverable; and he shall also for every such offence of designedly making away with, selling, pawning, or wrongfully destroying as aforesaid be liable, on the prosecution of the commanding officer of the corps or administrative regiment issuing the thing made away with, sold, pawned, or destroyed, to a penalty not exceeding five pounds.

Wrongful buying of arms, &c., from Volunteers.

29. If any person knowingly buys or takes in exchange from any Volunteer or any person acting on his behalf, or solicits or entices any Volunteer to sell, or knowingly assists or acts for any Volunteer in selling, or has in his possession or keeping, without satisfactorily accounting for, any arms, clothing, or appointments being public property or property of any Volunteer corps or administrative regiment, or any public stores or ammunition issued for the use of any such corps or regiment, he shall, on the first commission by him of any such offence, be liable to a penalty not exceeding twenty pounds, and shall, on a second and every other subsequent commission by him of any such offence, and on being convicted thereof in the like course of proceeding as that in which any such penalty is recoverable, be liable to a penalty not exceeding twenty pounds or less than five pounds, with or without imprisonment for any term not exceeding six months, with or without hard labour.

The justices before whom any person is convicted of any offence under the present section shall transmit the conviction to the next court of general or quarter sessions held for the county or place where the conviction is had, there to be kept by the proper officer among the records of the court; and on the prosecution

(*a*) A fine for the breach of a rule is to be a sum of money recoverable on complaint to a court of summary jurisdiction. See the Volunteer Act, 1897 (60 & 61 Vict. c. 41), below, p. 668.

of any person for any subsequent offence under the present section, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and such conviction shall be presumed not to have been quashed on appeal until the contrary is shown.

As to wilful injury to butts or targets.

30. If any person wilfully commits any damage to any butt or target belonging to or lawfully used by any Volunteer corps or administrative regiment, or without the leave of the commanding officer of the corps or regiment, searches for bullets in or otherwise disturbs the soil forming such butt or target, he shall for every such offence be liable, on the prosecution of the commanding officer, to a penalty not exceeding five pounds.

[Part V, as to the acquisition of land for ranges, repealed, 55 & 56 Vict., c. 43.]

PART VI.—Exemptions.

Service in Militia.

41. Every officer of the Volunteer Force, and every efficient Volunteer, and every non-commissioned officer of the Volunteer permanent staff, shall be exempt from liability to serve personally or to provide a substitute in the Militia of England or of Scotland.

In the case of a Volunteer, such exemption shall cease on his ceasing to be enrolled in the corps in connection with which he becomes entitled to be deemed efficient, unless he quits such corps on account of his changing his place of residence, in which case the exemption shall revive if within ten days after quitting such corps he is enrolled in another Volunteer corps.

The certificate of the commanding officer of a Volunteer corps (in the form set forth in the schedule to this Act, with such variations as circumstances may require) certifying that the person named therein is a Volunteer enrolled in that corps, and is exempt as aforesaid, shall be conclusive evidence thereof.

42. [Repealed, Stat. Law Rev. Act, 1875.]

Penalty for giving false certificate.

43. If any commanding officer of a Volunteer corps or administrative regiment knowingly gives any false certificate under this Act, he shall for every such offence be liable to a penalty not exceeding two hundred pounds, to be recovered in England by action in a superior court of law at Westminster, in Scotland by proceedings in the Court of Session, and in the Isle of Man by proceedings in any court of competent jurisdiction, and to be applied to the use of Her Majesty.

44. [Repealed, 38 & 39 Vict. c 60, s. 5.]

Tolls.

45. Any duty or toll leviable, under any Act of Parliament passed or to be passed, at any pier, wharf, quay, landing place, or bridge, or at any turnpike gate or bar, or at any other gate or bar on a public road, shall not be demanded or taken for—

(1.) Any officer of the Volunteer Force, or any Volunteer, or any non-commissioned officer of the Volunteer permanent staff, being on march or duty, or going to or returning from the place appointed for, and on the day for, exercise, inspection, review, or other public duty, and being in uniform ;

(2.) Any horse ridden or used by any officer, Volunteer or non-commissioned officer as aforesaid, being on march or duty, or going or returning as aforesaid, and being in uniform ;

(3.) Any cart, wagon, or carriage, public or private, employed only in carrying or conveying, or returning empty from carrying or conveying, having been employed only in carrying or conveying, any officer, Volunteer, or non-commissioned officer as aforesaid, being on march or duty, or going or returning as aforesaid, and being in uniform, with or without any conductor or driver, of such cart, wagon, or carriage, or domestic servant of such officer or Volunteer ;

(4.) Any cart, wagon, or carriage, public or private, employed only in carrying or conveying, or returning empty from carrying or conveying, having been employed only in carrying or conveying, any arms or baggage of any officer, Volunteer, or non-commissioned officer as aforesaid, being on march or duty, or going to or returning from the place appointed for exercise, inspection, review, or other public duty, or any military stores belonging to or for the use of, or any gun belonging to or used by, the Volunteer Force ;

(5.) Any horse or other beast drawing any such cart, wagon, or carriage as aforesaid.

If any person demands or takes any duty or toll in contravention of the present section, or if any person makes any false representation respecting himself or any other person, or any animal or thing, with intent to obtain for himself or otherwise, or fraudulently obtains for himself or otherwise, any exemption under the present section, he shall for every such offence be liable to a penalty not exceeding five pounds.

PART VII.—Miscellaneous Provisions.

46. [Repealed, Stat. Law Rev. Act, 1875.]
47. [Repealed, 50 & 51 Vict. c. 36.]

48. Any pecuniary penalty under this Act, the mode of recovery of which is not otherwise expressly provided for by this Act— and any money or fine by this Act made recoverable as a penalty under this Act is recoverable— may be recovered as follows :— Pecuniary penalties to be recovered summarily.

In England, in a summary way before two or more justices of the peace having jurisdiction where the offence is committed or where the offender happens to be, in manner directed by the Act of the session of the eleventh and twelfth years of Her Majesty (chapter forty-three), "to facilitate the performance of the duties of justices of the peace out of sessions, "within England and Wales, with respect to summary convictions and orders" ; or in case of proceedings in the City of London, or in the metropolitan police district, in manner directed by the respective enactments for the time being in force relative to summary proceedings there ; In England under 11 & 12 Vict. c. 43.

In Scotland, in manner directed by the Railways Clauses Consolidation (Scotland) Act, 1845, with respect to penalties imposed by that Act, the recovery of which is not otherwise provided for ; In Scotland under 8 & 9 Vict. c. 33.

In the Isle of Man, by proceedings in any court of competent jurisdiction, and in the manner in which penalties of like amount are recoverable by the laws of the Isle of Man, or as near thereto as circumstances admit. In the Isle of Man.

In England, where the sum adjudged to be paid on a summary conviction or adjudication, inclusive of any costs, exceeds five pounds, or the imprisonment awarded exceeds one month, and the person who is convicted, or against whom the adjudication is made, thinks himself aggrieved by the conviction or adjudication, the following provisions shall take effect :—

(1.) Such person may appeal to the next court of general or quarter sessions held not less than twelve days after the day of such conviction or adjudication for the county or place where the conviction or adjudication is had ;

. . . . . .

(4.) On such notice being given, and such recognizance being entered into, or such deposit being made, the appellant shall be liberated if in custody.

In Scotland, and the Isle of Man, in like cases as in England, an appeal shall lie, in manner in that behalf provided by the law of Scotland and of the Isle of Man respectively.

A summary conviction or adjudication under this Act in England, or an adjudication made on appeal therefrom, shall not be quashed for want of form or be removed by certiorari.

. . . . . .

Application of certain penalties.

Any pecuniary penalty recovered summarily under this Act on the prosecution of the commanding officer of a Volunteer corps or administrative regiment shall (notwithstanding anything in any Act relating to municipal corporations or to the metropolitan police or in any other Act contained) be paid to the commanding officer, and be applied as part of the general fund of the corps or regiment.

Interpretation of terms.

49. In this Act—

The term "lieutenant" of a county includes vice-lieutenant, and, as to the city of London, the commissioners of lieutenancy for the same ;

The term "Volunteer" means a non-commissioned officer or private belonging to a Volunteer corps, exclusive of the permanent staff thereof ;

The term "person" includes (where the case requires) a body of persons corporate or unincorporate ;

The term "appointments" includes accoutrements and equipments of every kind other than clothing.

Application of provisions of this Act to adjutants serjeant-instructors, and administrative regiments.

[If at any time Her Majesty thinks fit to appoint on the permanent staff of a Volunteer corps or administrative regiment a quartermaster and a paymaster, or either of such officers, commissioned by Her Majesty—or if at any time any non-commissioned officer or man, engaged and attested (according to regulations under this Act) for a period not exceeding five years, is appointed on the permanent staff of a Volunteer corps or administrative regiment to serve in any other capacity than that of serjeant-instructor — then and in such cases all the provisions of this Act relating to adjutants and serjeant-instructors and to officers and non-commissioned officers of the Volunteer permanent staff shall apply to such quartermasters and paymasters, and to such other non-commissioned officers and such men respectively (*a*).]

All the provisions of this Act relating to an administrative regiment shall apply to any united body formed of two or more separate Volunteer corps for military or administrative purposes

(*a*) See note (*b*) on page 654.

by the authority of one of Her Majesty's Principal Secretaries of State, whether the corps so united are formed into a regiment or a brigade or a battalion, or any other body.

Application of this Act to Isle of Wight, Cinque Ports, Isle of Man, and other places.

50. For the purposes of this Act the Isle of Wight shall be deemed to be a county of itself, and the governor thereof, or the person for the time being performing the duties of governor, shall be deemed to be the lieutenant of such county; the Cinque Ports, two ancient towns, and their members, shall be deemed to be a county of themselves, and the warden thereof, or in his absence his lieutenant or lieutenants, shall be deemed to be the lieutenant of such county; every riding, stewartry, city, or place for which Her Majesty constitutes a lieutenant shall be deemed to be a county of itself, and the lieutenant appointed for the same shall be deemed to be the lieutenant of such county; and the Isle of Man shall be deemed to be a county of England, and the lieutenant-governor thereof, or the person for the time being performing the duties of lieutenant-governor, shall be deemed to be the lieutenant of such county.

51. [Repealed, Stat. Law Rev. Act, 1875.]

Not to apply to London Artillery Company.

52. Nothing in this Act shall apply to the Honourable Artillery Company of London.

Extent of Act.

53. This Act shall not extend to Ireland.

SCHEDULE.

(i.) *Oath of Officer and Volunteer.*

I, *A. B.*, do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, and that I will faithfully serve Her Majesty in Great Britain for the defence of the same against all Her enemies and opposers whatsoever, according to the conditions of my service.

[*The name of the successor of Her Majesty Queen Victoria for the time being, with proper words of reference thereto, to be substituted as occasion requires.*]

. . . . . .

(iv.) *Certificate for Exemption from Militia.*

I, *A. B.*, commanding officer of the Volunteer corps, hereby certify that *C. D.* is a Volunteer enrolled in that corps, and is by virtue of the Volunteer Act, 1863, exempt from liability to serve personally or to provide a substitute in the Militia of [England].

Given under my hand at this day of one thousand eight hundred and [sixty-four].

A. B.,
Lieutenant-Colonel Commanding.

Volunteer Act, 1869.

[32 & 33 Vict. c. 81.]

An Act to amend the Volunteer Act, 1863.

[9th August, 1869.]

Short title.

1. This Act may be cited as the Volunteer Act, 1869.

Construction.

2. This Act shall be construed as one with the Volunteer Act, 1863, in this Act referred to as the principal Act, and that Act and this Act may be cited together as the Volunteer Acts, 1863 and 1869.

Remedy for non-delivery of arms, &c., on demand.

3. Where any person neglects or refuses, on demand made as hereinafter mentioned, to deliver up any property (whether arms, clothing, appointments, ammunition, or public stores), which is public property, or the property of a Volunteer corps or administrative regiment, and has been issued to such person, or is in his possession or keeping as an officer or Volunteer, any justice of the peace may, upon reasonable ground being shown for a suspicion that the property is to be found on any premises, issue a warrant under his hand empowering the person therein named to enter upon such premises and search for the property, and the person so empowered may enter and search accordingly, and shall seize such property, if found, and remove the same with all convenient speed to such place as may be directed by the Secretary of State, person, officer, or adjutant who made the demand.

Notwithstanding any such seizure and removal, the same penalty may be enforced against any person and the value of any such property may be recovered from the person neglecting or refusing as aforesaid, in the same manner as it might have been under the principal Act if this Act had not passed.

The jurisdiction under this section may be exercised by any sheriff or magistrate who under the principal Act has jurisdiction with respect to the recovery of a penalty.

Mode of making demand.

4. A demand may be made for the purposes of this Act by the following persons, viz. :—

(1.) In any case by one of Her Majesty's Principal Secretaries of State or any person authorised in writing by him ;

(2.) In the case of any Volunteer and any officer of inferior rank to the person making the demand, by the commanding officer or adjutant of the Volunteer corps or administrative regiment to which such property belongs, or to which such Volunteer or officer belongs.

The demand may be made by the delivery of a written notice to the person upon whom the demand is made, or by leaving the same at his usual or last known place of abode, or, if no such abode is known, by affixing the same at the orderly room of the corps or regiment to which he belongs or belonged, or at the place where notices relating to such corps or regiment are usually affixed.

Wrongful pawning arms, &c., by Volunteers.

5. Section 29 of the principal Act, which relates to the wrongful buying and selling of any property (whether arms, clothing, appointments, ammunition, or public stores), which is public property or the property of a corps or administrative regiment shall extend to the pawning and taking in pawn of such property ; and the said section shall be construed as if the words "buy," "sell," and "selling" included take in pawn, pawn, and pawning respectively

Appearance of commanding officer by adjutant, &c.

6. The commanding officer of any corps or administrative regiment may appear in any county court or before any justice, sheriff, or magistrate, by the adjutant or serjeant-major of such corps or regiment, or any member of the staff of the corps or regiment authorised in writing under the hand of such commanding officer.

Regulation of the Forces Act, 1881.

[44 & 45 Vict. c. 57.]

Extract from

An Act to amend the Law respecting the Regulation of Her Majesty's Forces, and to Amend the Army Discipline and Regulation Act, 1879. [27th August, 1881.]

PART I.—Volunteers.

Removal of doubts as to consolidation of corps under 26 & 27 Vict. c. 65.

9. Whereas under the Volunteer Act, 1863, provision is made for the government and organisation of volunteer corps whose services are accepted by Her Majesty, and for all lands, money, effects and other property belonging to the corps (in this Act referred to as the corps property), being vested in the commanding officer of the corps for the time being, and being managed in accordance with rules of the corps made under that Act:

And whereas provision is also made by the said Act for separate volunteer corps being formed under the authority of the Secretary of State into a united body for military and administrative purposes:

And whereas under the authority of the Secretary of State separate volunteer corps (in this Act referred to as constituent corps) have been consolidated into one corps, and form corresponding companies in such consolidated corps, and doubts have arisen with respect to such consolidation, and it is expedient to remove these doubts: Be it therefore enacted as follows:

(1) Every volunteer corps formed under the authority of the Secretary of State, whether before or after the passing of this Act, by the consolidation of two or more volunteer corps, shall as from the date of consolidation be deemed to have been a volunteer corps duly formed under the Volunteer Act, 1863, whose services have been accepted by Her Majesty, and the officers and volunteers belonging to the constituent corps shall be deemed to have been duly appointed and enrolled as officers and volunteers of the consolidated corps, and the commanding officer of the consolidated corps shall, for the purposes of the Volunteer Act, 1863, be deemed to be the commanding officer thereof and of every part thereof, and the corps property vested in, and the liabilities attached to, the commanding officer of the constituent corps on behalf of the corps shall be deemed on consolidation to have become vested in and attached to the commanding officer of the consolidated corps, and all agreements with, grants to, and deeds and documents in favour of any of the constituent corps shall enure for the benefit of and be deemed to refer to the companies in the consolidated corps which correspond to the said constituent corps.

(2.) The said property shall be managed in such manner and for such purposes as, subject to the provision in this section contained, is directed by the rules of the consolidated corps;

Provided that if and so long as any companies in the consolidated corps which correspond to the said constituent corps continue to exist, and if no other arrangement has been made either before or after the passing of this Act, then, if bye-laws are from time to time made for the purpose with the approval of the commanding officer of the consolidated corps, such bye-laws, so far as they extend shall, to the exclusion of the said rules, determine the manner and purposes in and for which such property shall be managed.

(3.) The officers and volunteers of the companies in the consolidated corps which correspond to the said constituent corps shall indemnify the commanding officer of the consolidated corps against all debts and liabilities for which the constituent corps was liable before the consolidation, or which may subsequently arise in respect of the property held by him, which is managed in accordance with the bye-laws in this section mentioned.

(4.) No officer or volunteer who belonged to a constituent corps at the time of its consolidation shall, without his consent, be removed to any of the companies not corresponding to that corps.

(5.) Any question which arises under this section as to whether any companies do or do not correspond to a constituent corps, or continue to exist, and any difference between the companies and the consolidated corps, or the commanding officer thereof, in relation to the bye-laws, property, debts, or liabilities referred to in this section, shall be referred for the decision of the Secretary of State, whose decision shall be final.

(6.) The provisions of this section with respect to companies shall apply to troops and batteries respectively, and the provisions of this section with respect to companies corresponding to constituent corps, shall apply to the case of a single troop, battery, or company corresponding to a constituent corps.

Volunteer Act, 1895.

[58 & 59 Vict. c. 23.]

An Act to amend the Law as to the calling out of Volunteers for actual Military Service. [6th July, 1895.]

Amendment of 26 & 27 Vict. c. 65, ss. 17–20.

1. Sections seventeen to twenty of the Volunteer Act, 1863, shall apply in the case of any part of a Volunteer corps in like manner as they apply in the case of a whole Volunteer corps.

2. [Repealed, Volunteer Act, 1900, s. 3.]

Short title.

3. This Act may be cited as the Volunteer Act, 1895.

Volunteer Act, 1897.

[60 & 61 Vict. c. 47.]

An Act to declare the effect of the Provisions of the Volunteer Act, 1863, with respect to Rules for Volunteer Corps. [6th August, 1897.]

Explanation of 26 & 27

1. For removing doubts it is hereby declared that the power under Section twenty-four of the Volunteer Act, 1863, to make

rules with respect to a Volunteer corps shall extend, and be deemed to have always extended, to rules for securing the efficiency of the members of the corps, and that a fine for the breach of any rule made under the aforesaid section shall be a sum of money recoverable on complaint to a court of summary jurisdiction. Vict. c. 65, ss. 24, 27.

2. This Act may be cited as the Volunteer Act, 1897. Short title.

Volunteer Act, 1900.

[63 & 64 Vict. c. 39.]

An Act to amend the Volunteer Act, 1863. [6th August, 1900.]

1. [See p. 658, note (*b*), *supra*.]

2. (1) It shall be lawful for Her Majesty to accept the offer of any member of a volunteer corps to subject himself to the liability to be called out for actual military service at any time for purposes of coast defence at such places in Great Britain as may be specified in his agreement. Power of Volunteer to enter into special agreements as to service.

(2) The Secretary of State may make regulations as to the calling out of persons whose offers have been accepted under this section, and for adapting the provisions of Sections seventeen to twenty of the Volunteer Act, 1863, to the case of persons called out in pursuance of an agreement under this section.

3. [See on s. 2 of Volunteer Act, 1895, p. 668, *supra*.]

4. This Act may be cited as the Volunteer Act, 1900. Short title.

Regimental Debts Act, 1893.

[56 Vict. c. 5.]

An Act to consolidate and amend the Law relating to the Payment of Regimental Debts, and the Collection and Disposal of the Effects of Officers and Soldiers in case of Death, Desertion, Insanity, and other cases. [29th April, 1893.]

Collection of Effects and Payment of Preferential Charges.

1. On the death of a person while subject to military law the prescribed committee of adjustment shall, as soon as may be, in accordance with the prescribed regulations and subject to any exceptions made thereby, On death of person subject to military law, committee of adjustment to secure effects and pay charges.

(1.) Secure and make an inventory of all such of the effects of the deceased as are in camp or quarters, and, if the death occurs out of the United Kingdom, are within the prescribed area whether station, colony, or command, or other (which area is in this Act referred to as the regulation area); and

(2.) Ascertain the amount and provide for the payment of the preferential charges on the property of the deceased.

2. The following shall be the preferential charges on the property of a person dying while subject to military law, and shall, except so far as other provision may be made for them or any of them, be payable in preference to all other debts and liabilities, and, as among themselves, in the following order :— Preferential charges.

(1.) Expenses of last illness and funeral;
(2.) Military debts, namely, sums due in respect of, or of any advance in respect of—
  (*a*) Quarters;
  (*b*) Mess, band, and other regimental accounts;
  (*c*) Military clothing, appointments, and equipments, not exceeding a sum equal to six months' pay of the deceased, and having become due within eighteen months before his death;

to which shall be added, where the death occurs out of the United Kingdom—

(3.) Servants' wages, not exceeding two months' wages to each servant; and
(4.) Household expenses incurred within a month before the death, or after the last issue of pay to the deceased, whichever is the shorter period.

Surplus only of personal estate to be deemed personal estate.

3. So much only of the personal property of a person dying while subject to military law as remains after payment of the preferential charges, shall be considered personal estate of the deceased with reference to the calculation of probate duty, or of any other duty, tax, or percentage, or for any of the purposes of administration.

Decision of questions as to preferential charges.

4. If in any case a doubt or difference arises in relation to any preferential charge or the payment thereof, the decision of the Secretary of State, or of such officer or person as the Secretary of State deputes by writing to act in this behalf, shall be final, and shall be binding on all persons for all purposes.

Payment of preferential charges by representatives or other persons.

5. Subject to the prescribed regulations, if any person pays or secures the payment of the preferential charges in full, the committee of adjustment shall not further interfere in relation to the property, except so far as they may be requested so to do by or on behalf of that person.

Powers and duties of committee where preferential charges are not paid.

6. (1.) If within one month after the death or such further time not exceeding the prescribed time as the committee of adjustment allow, the preferential charges are not paid or secured to their satisfaction, the committee shall proceed to pay those charges.

(2.) If the death occurs out of the United Kingdom, the committee of adjustment, save as may be prescribed, shall, if it appears to them necessary for the payment of the preferential charges, and in any case may, collect all the personal property of the deceased in the regulation area.

(3.) The committee, save as may be prescribed, shall, for the purpose of paying the preferential charges and their expenses, and in any case may, at such time as, subject to the prescribed regulations, they think expedient, sell and convert into money such of the personal property of the deceased as does not consist of money.

(4.) If the death occurs out of the United Kingdom they may also, save as otherwise prescribed, pay all debts, which appear to them to be legally payable, out of the personal estate of the deceased.

(5.) For the purpose of the exercise of their duties the committee shall, to the exclusion of all authorities and persons whomsoever, have the same rights and powers as if they had taken out representation to the deceased, and also if in a colony the powers which any official administrator has by the law of that colony; and any receipt given by the committee shall have the like effect as if it had been given by the legal personal representative of the deceased.

(6.) The committee of adjustment shall lodge the surplus remaining in their hands after payment of the said charges and expenses and debts with such person (in this Act referred to as the paymaster), at such times, in such manner, and together with such inventory, accounts, vouchers, and information as may be prescribed.

Disposal of Surplus and Residue.

Disposal of surplus by paymaster.

7. The paymaster shall pay the surplus in the prescribed manner, and subject to the prescribed provisions and exceptions, as follows :—

(1.) If out of the United Kingdom he may pay thereout any expenses which under the prescribed regulations are chargeable against the surplus, and any debts which are legally payable out of the personal estate of the deceased;

(2.) If he knows of a representative of the deceased in the same part of Her Majesty's dominions, he shall pay the surplus to that representative ;

(3.) If he does not know of such a representative as above mentioned, and the amount does not exceed one hundred pounds, he may pay or apply all or any part thereof to or for the benefit of such persons in the same part of Her Majesty's dominions as he knows of and appear to be beneficially entitled to the personal estate of the deceased, or to or for the benefit of any of such persons ;

(4.) He shall remit the surplus or so much thereof as is not paid or applied in pursuance of this section to the Secretary of State.

Disposal of residue by Secretary of State.

8. The Secretary of State, on being informed of the death of a person subject to military law, shall proceed with all reasonable speed as follows :—

(1.) He shall cause to be ascertained the total amount to the credit of the deceased, including any surplus or part of a surplus remitted by a paymaster as mentioned in this Act, and all arrears of pay, batta grants, and other allowances in the nature thereof : which total amount so ascertained is in this Act referred to as the residue ;

(2.) If he has notice of a representative of the deceased, he shall pay the residue to that representative ;

(3.) He may, and if it is so prescribed shall, before such payment, publish the prescribed notice stating the amount of the residue and such other particulars respecting the deceased and his property as may seem fit, and also the mode in which any application respecting the residue is to be made to the Secretary of State. Provided that the Secretary of State may pay out of any money in his hands to the credit of the deceased any preferential charges appearing to him to have been left unpaid by the committee of adjustment.

Disposal by Secretary of State of residue where residue does not exceed one

9. Where the residue does not exceed one hundred pounds, the Secretary of State may, if he thinks fit, require representation to be taken out ; but if he does not, and has no notice of a representative of the deceased, then, after the expiration of the prescribed time and the publication of the prescribed notice (if any), the residue shall be disposed of as follows :—

hundred pounds, and no representation.

(1.) The Secretary of State may, if he thinks fit, pay or apply the residue or any part thereof, in accordance with the prescribed regulations to or for the benefit of any of the persons appearing to be beneficially entitled to the personal estate of the deceased, or any of them, and may for that purpose invest the same by deposit in a military or other savings bank, or otherwise, and, if necessary, in the name or names of a trustee or trustees for any such person.

(2.) Any part thereof remaining in the hands of the Secretary of State, and not irrevocably appropriated, shall be applied in paying any debt of the deceased which—

(*a*) accrued within three years before the death ; and

(*b*) is claimed from the Secretary of State within two years after the death ; and

(*c*) is proved by the claimant to the satisfaction of the Secretary of State.

(3.) Except as above in this section provided, a person shall not be entitled to obtain payment out of any residue in the hands of the Secretary of State of any sum due from the deceased.

Application of residue undisposed of.

10. (1.) Where any residue or any part thereof remains undisposed of and unappropriated, the prescribed notice thereof shall be published, and during six years next after the publication of that notice the like notice with any necessary modifications shall be annually published.

(2.) So much of the residue as remains undisposed of and unappropriated for six months after the publication of the last of such notices shall, together with any income or accumulations of income accrued therefrom, be applied in the prescribed manner in or towards the creation or maintenance of such compassionate or other fund for the benefit of widows and children, or other near relatives, of soldiers dying on service, or within six months after discharge, as may be prescribed.

(3.) Provided that the application under this section of any residue, or part of a residue, shall not bar any claim of any person to the same, or any part thereof.

Supplemental Provisions.

Disposal of medals and decorations.

11. Medals and decorations shall not be considered to be comprised in the personal estate of the deceased with reference to the claims of creditors or for any of the purposes of administration under this Act or otherwise ; and, notwithstanding anything in this or any other Act, the same, when secured by the committee of adjustment, shall be held and disposed of according to regulations laid down by royal warrant.

Disposal of effects not money.

12. Where any part of the personal estate of the deceased consists of effects, securities, or other property not converted into money, the provisions of this Act with respect to paying or remitting the surplus shall, save as may be prescribed, extend to the delivery, transmission, or transfer of such effects, securities, or property, and the paymaster and Secretary of State shall respectively have the same power of converting the same into money as the representative of the deceased.

Regulations by royal warrant.

13. (1.) Her Majesty the Queen may, by warrant under the Royal Sign Manual, make regulations for all such things as are

by this Act directed or authorised to be prescribed or made subject to regulations, and also such regulations as may seem fit for the better execution of this Act, or any part thereof; and may by such regulations make different provisions to meet different cases or different circumstances.

(2.) Every royal warrant made under this Act shall be printed by the Queen's printer, and published under the authority of Her Majesty's Stationery Office, and laid before both Houses of Parliament as soon as may be after the making thereof.

Restriction on interposition of official administrators.

14. (1.) An official administrator, notwithstanding any law regulating his office independently of this Act, shall not interpose in any manner in relation to any property of a person dying while subject to military law, except in the prescribed cases, or except when and so far as he is expressly required to do so by a committee of adjustment, or paymaster, or Secretary of State.

(2.) The committee of adjustment in such cases, under such circumstances, and at such times as may be prescribed, may request an official administrator to exercise his official powers either on behalf of the committee or otherwise, and the administrator shall comply with the request. The committee may also lodge any property secured or collected by them with any official administrator.

(3.) Where under this Act any property comes to the hands of any official administrator, he shall administer the same as regards preferential charges and otherwise in accordance with this Act, and subject thereto, according to the law regulating his office independently of this Act.

(4.) The official administrator shall remit any surplus remaining in his hands after discharge of all debts and his charges to the Secretary of State at such time and in such manner as may be prescribed, to be disposed of according to the provisions of this Act as if remitted by a paymaster.

(5.) An official administrator shall not take a percentage on the property exceeding 3 per cent. on the gross amount coming to or remaining in his hands after payment of preferential charges.

Money remitted not to be assets in place where remitted to.

15. Any property coming under this Act to the hands of any committee of adjustment or paymaster shall not, by reason of so coming, be deemed assets or effects at the place in which that committee or paymaster is stationed or resides, and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

Duty and representation where sums under one hundred pounds.

16. Where any surplus or residue, as the case may be, does not exceed one hundred pounds, no duty shall be payable in the United Kingdom or India in respect thereof, and it shall not be necessary that representation to any deceased person be taken out for the purpose of obtaining payment thereof or of any part thereof under this Act from a paymaster or a Secretary of State, except in any prescribed case, or in any case where the Secretary of State requires it.

Discharge of paymaster and Secretary of State.

17. Compliance with the regulations under this Act with respect to the mode of payment of any surplus or residue or any part thereof to any person (whether by transmission or remission to another place or person or otherwise) shall discharge the Secretary of State or paymaster or other person complying with the regulations, and he shall not be liable by reason of the surplus or residue or part which may be in his hands having been paid, transmitted, remitted, or otherwise dealt with in accordance with the regulations.

Validity of payments, sales, &c., under this Act.

18. Every payment, application, sale, or other disposition of property made by the Secretary of State, or by any committee of adjustment, or by any paymaster, when acting in execution or supposed execution of this Act, or of any royal warrant for carrying this Act into effect, shall be valid as against all persons whomsoever; and the Secretary of State, and every officer belonging to any such committee, and every such paymaster as aforesaid shall, by virtue of this Act, be absolutely discharged from all liability in respect of the property so paid, applied, sold, or disposed of.

Saving for rights of representative.

19. After the committee of adjustment have lodged with the paymaster the surplus of the property of any deceased person, any representative of that person and any official administrator shall, as regards any property of a deceased person not collected by the committee of adjustment and not forming part of the surplus or residue in this Act mentioned, have the same rights and duties as if this Act had not passed.

Creditor administering not entitled to claim property.

20. A creditor, as such, shall not be deemed a person entitled to take out representation to the deceased within the meaning of this Act, or to pay or secure the preferential charges; nor shall a creditor taking out representation be entitled as representative of the deceased to claim from a paymaster or the Secretary of State any part of the property of the deceased.

Deposit in court of probate, &c., of original wills in hands of Secretary of State, and declaration of intestacy.

21. (1.) Where any original will of a person dying while subject to military law, whether he died before or after the commencement of this Act, comes to the hands of a Secretary of State, and representation under the same is not taken out, then the Secretary of State may cause the same to be deposited as follows:—

(*a*) Where the domicile of the testator appears to the Secretary of State to have been in Scotland, then in the office of the commissary clerk of the commissary court of the county of Edinburgh:

(*b*) Where the domicile of the testator appears to the Secretary of State to have been in Ireland, then in the place for the time being appointed in Dublin for the deposit of original wills brought into the High Court in Ireland:

(*c*) In any other case, in the place for the time being appointed in London for the deposit of original wills brought into the High Court in England.

(2) Where a person dies while subject to military law intestate, and under this Act any residue of his property comes to the hands of the Secretary of State, and representation to the deceased is not taken out, then the Secretary of State may, if it seems fit, cause a declaration of his intestacy to be deposited in the place or office where his original will (if any) would be deposited as aforesaid.

(3) In every such case the Secretary of State may cause to be deposited, together with the original will or declaration of intestacy, an inventory showing the personal property of the deceased, and the application thereof, as far as the same is known.

(4) Every such original will, declaration of intestacy, and inventory shall be preserved and dealt with, and may be inspected, subject and according to the same rules or orders and on payment of the same fees as any other like documents deposited in that office or place, or subject and according to such other rules or orders and on payment of such other fees, as may be made or fixed in that behalf by the court, judge, or other authority empowered to make rules or orders in relation to other documents deposited in the same place or office.

Application of Act to special Cases.

Special provision as to an army paymaster.

22. In the application of this Act to an army paymaster the following modifications shall be made :—

(1.) The powers and duties of the committee of adjustment shall arise immediately on his death, and shall continue notwithstanding that the professional charges are paid or secured :

(2.) Money in the possession or under the control of an army paymaster at his death shall not be considered to be comprised in his effects for the purposes of this Act :

(3.) The surplus in the hands of the committee of adjustment and the residue in the hands of a Secretary of State shall be dealt with and disposed of as may be prescribed and not according to the foregoing provisions of this Act

Application of Act to deserters, felons, &c.

23. Where a person subject to military law deserts, or is absent without leave for twenty-one days, or is convicted by a civil court of any offence which by the law of England is felony, or is delivered up as an apprentice, whether in pursuance of an order of a court, or otherwise, the provisions of this Act shall apply as if the person were dead, subject to the following modifications :

(1.) The powers of the committee of adjustment shall arise and continue notwithstanding that the preferential charges are paid or secured :

(2.) The committee of adjustment shall dispose of the surplus in the prescribed manner, and the same when so disposed of shall be free from all claim on the part of the said person or any one claiming through him.

Application of Act to case of insanity.

24. Where a person subject to military law is ascertained in the prescribed manner to be insane, the provisions of this Act shall apply as if he had died at the time of his insanity being so ascertained, subject nevertheless to the prescribed exceptions, and to the following modifications :

(*a*) The preferential charges may be paid by the wife of the insane person, or by any person who, subject to the prescribed regulations, appears to be a relative of or person undertaking the care of the insane person or of his property ;

(*b*) The committee of adjustment shall dispose of the surplus in the prescribed manner with a view to its being applied for the benefit of the insane person.

Application of Act to India.

General application of Act to India.

25. This Act shall apply to India as if it were a colony, subject to the modifications in this Act mentioned, and to this exception, that it shall not, save so far as may be prescribed, apply to any native of India within the meaning of Indian military law.

Provision where death occurs in India, the deceased not being a soldier.

26. In the case of the death of a person who dies while in India or while on service with any force under the command of the commander-in-chief in India, or of any provincial commander-in-chief in India, and who is not a soldier of Her Majesty's regular forces, this Act shall apply with the following modifications :

(1.) The paymaster shall after the prescribed notice pay all debts of which he has notice within the prescribed time, and which appear to him to be lawfully payable out of the estate of the deceased. Provided that if under the special circumstances of the case of the deceased it appears to the paymaster inexpedient or unjust to pay any claims out of the estate, or if the claims lodged exceed in the whole

the prescribed amount, the paymaster shall, without discharging those claims, or any of them, transfer the surplus aforesaid to the official administrator :

(2.) Where the paymaster does not so transfer the surplus, he shall dispose thereof, or of so much thereof as remains after the discharge of any claims, in manner directed by this Act :

(3.) The foregoing provisions of this section shall not apply to an army paymaster :

(4.) The secretary to the Government of India in the military department shall have the same power as the Secretary of State to decide any doubt or difference as to preferential charges, and his decision shall have the same effect as if it were given by the Secretary of State.

Deduction of arrears of subscription to military and orphan funds.

27. Nothing in this Act shall prevent the Secretary of State from deducting in the pay office from any arrears of pay due to the deceased the amount of any arrears of subscription due by the deceased to the Indian military and orphan funds, or either of them.

Provision as to Secretary of State for India.

28. Anything authorized or required by this Act to be done by, to, or before a Secretary of State may, in the prescribed cases, be done by, to, or before the Secretary of State in Council of India.

Definitions ; Extent ; Commencement ; Repeal ; Short Title.

Definitions.

29. In this Act, unless the context otherwise requires,—

The expression "officer" includes a warrant officer, although not holding an honorary commission :

The expression "representation" includes probate and letters of administration, with or without will annexed, and in Scotland confirmation, and in India or a colony the corresponding documents in use acording to the law of India or the colony :

The expression "representative" means any person taking out representation, but does not include an official administrator :

The expression "official administrator" means in India the administrator-general of any presidency or province, and in a colony means any public officer who has by law any powers or duties in relation to the collection or distribution of the estate of any deceased person :

The expression "prescribed" means prescribed by Royal Warrant.

Save as aforesaid expressions in this Act have the same meaning as in the Army Act.

Extent of Act.

30. (1.) This Act shall apply to all persons subject to military law, whether within or without Her Majesty's dominions.

(2.) This Act shall be registered by the Royal Courts of the Channel Islands, and shall apply to those Islands and to the Isle of Man as if they were parts of the United Kingdom.

(3.) This Act shall apply to a place in which Her Majesty exercises jurisdiction under the Foreign Jurisdiction Act, 1890, as if that place were a colony.

53 & 54 Vict. c. 37.

Commencement of Act.

31. This Act shall come into operation on the first day of October one thousand eight hundred and ninety-three, or any earlier day appointed either generally or with reference to any place or places by royal warrant.

Repeal.

32. The Regimental Debts Act, 1863, and section fifty-one of the Regulation of the Forces Act, 1881, are hereby repealed.

Short title.

33. This Act may be cited as the Regimental Debts Act, 1893.

Royal Warrant—Regulations under the Regimental Debts Act, 1893.

VICTORIA R.I.

WHEREAS by Our Warrant of 22nd April, 1881, We were pleased to make the Regulations thereunto annexed, being regulations under the Regimental Debts Act, 1863; and Whereas by the Regimental Debts Act, 1893, which will come into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed; and Whereas We deem it expedient to make Regulations under the Regimental Debts Act, 1893, to take effect as from the 1st October, 1893, in lieu of the Regulations annexed to Our said Warrant of the 22nd April, 1881;

OUR WILL AND PLEASURE IS that our said Warrant of 22nd April, 1881, and the Regulations thereunto annexed, shall be and are hereby cancelled as from the 1st October, 1893, and this Our Warrant and Regulations which shall be administered, construed, and interpreted by Our Secretary of State for War, and Our Secretary of State in Council of India, as the case may require, shall, on and after the 1st October, 1893, subject to and in conjunction with the Regimental Debts Act, 1893, be the sole and standing authority on the matters therein treated of; (*a*)

PROVIDED ALWAYS that where and so far as the Regimental Debts Act, 1893, the Army Act, or this Our Warrant and the Regulations thereunto annexed do not particularly prescribe the manner in which any sum of money is to be disposed of or invested, then and in every such case, until by further Warrant under Our Royal Sign Manual we otherwise direct, the same shall be disposed of or invested as the same would have been disposed of or invested if the Acts above quoted had not been passed.

Until by further Warrant under Our Royal Sign Manual We otherwise direct, medals and decorations belonging to persons dying while subject to Military Law shall be disposed of as Our Secretary of State for War may, according to the circumstances of different cases, think fit.

Given at Our Court at Balmoral, this 30th day of August, 1893, in the 57th year of Our Reign.

By Her Majesty's Command,

H. CAMPBELL-BANNERMAN.

REGULATIONS.

(Section 1 of the Act.)

1. The committee of adjustment will consist of three officers. When practicable, the president should not be below the rank of captain, or, if the deceased was an officer, below that of major.

(*a*) The Regulations annexed to the Royal Warrant of the 30th August, 1893, have been amended by the Royal Warrants of the 26th October, 1904, and 23rd May, 1906, and the amendments so made have been incorporated in the Regulations as printed below.

2. The committee will be appointed by the following officers :—

If the deceased was serving with his unit, by the commanding officer.

If the death occurred at sea, by the officer commanding the troops on board ship.

In all other cases, except as provided in paragraph 5 (*b*), by the officer in immediate command.

3. If the death occurs at sea, and a committee cannot be assembled on board ship, it will be assembled as soon as possible after the ship reaches its destination. If the port of disembarkation is a military station, the committee will be assembled by the officer in immediate command ; if it is not a military station, by the general officer in whose command the port is situated.

4. If the officer authorized by paragraphs 2 or 3 to appoint a committee is, from any reason, unable to do so, he will apply to superior authority.

5. In cases where the deceased died while temporarily absent from the country in which he was stationed, then—

(*a*) If the death occurred out of the United Kingdom a local committee of adjustment may also be appointed by the officer in command of the unit or station from which the deceased was temporarily absent to deal with his affairs in that country ; and

(*b*) If the death occurred in the United Kingdom one committee only shall be assembled, which shall be appointed by the officer who would have appointed the committee had the deceased not been so temporarily absent.

5A. Where the deceased was an officer in receipt of regimental or other pay issued in advance, the committee of adjustment will ascertain from the agent or paymaster who issued the pay whether any sum is due to the public in respect of any issue beyond the date of the officer's death, and will, before paying any private bills or handing over any sum to the next of kin or legal representative, provide for the refund of any such over-issue of pay out of the assets in the hands of the committee.

6. The committee of adjustment will in all cases, except as provided in paragraph 8, as soon as practicable after the death, make an inventory of the property, and an account of the debts and credits of the deceased.

7. The inventory and account will be prepared in duplicate, on the forms supplied, and both the original and the duplicate will be certified by the committee of adjustment.

The original will be dealt with as hereafter directed in these regulations.

The duplicate will be disposed of as follows :—

(*a*) Where the deceased, not having been at the time of his death a member of the Indian Services, has died elsewhere than in India, it will be kept with the regimental or other proper records.

(*b*) Where the deceased was a member of the Indian Services at the time of his death or has died in India, it will, if he was an officer, be sent to the Secretary to the Government of India in the Military Department, and if he was a non-commissioned officer or man of His Majesty's British Forces, it will be kept with the regimental records, unless a surplus is transferred to the Administrator-General of

the Presidency, or Province, under Section 26 (1) of the Act, in which case it will be sent to him. It will also accompany the remittance of a surplus under Section 26 (2) of the Act.

8. Where payment of the preferential charges is secured under Section 5 of the Act, the committee of adjustment may abstain from securing and making an inventory of the effects, if so requested by the person paying or securing payment of the preferential charges.

9. The effects secured will be kept in a place of security until duly sold or otherwise disposed of.

10. The expression "regulation area" means the station, colony, or command, or such other area as may, in case of doubt, be determined by the Secretary of State.

(Section 2 of the Act, § (1).)

11. The actual and necessary expenses of the funeral, in the United Kingdom or the colonies, of a warrant officer, non-commissioned officer, or man, will be borne by the public to such extent as may be provided for in the allowance regulations.

(Section 5 of the Act.)

12. The expression "any person" means the representative of the deceased, the widow (if any), or one of the next of kin.

13. Where the committee of adjustment withdraw from interference in relation to property of the deceased in consequence of the representative of the deceased, or his widow, or one of his next of kin, paying in full the preferential charges, the committee will forthwith forward, together with the inventory (if made) and account, a report of the facts and circumstances as follows :—

Where the deceased, not having been at the time of his death a non-commissioned officer or man of His Majesty's British Forces, has died in India or was a member of the Indian Services, to the Secretary to the Government of India in the military department.

In other cases to the Secretary of the War Office.

(Section 6 of the Act, § (1), (2), (3).)

14. A committee of adjustment assembled out of the United Kingdom may, if it thinks fit, postpone any sale of the effects until such time as the next of kin of the deceased have had an opportunity of notifying their wishes regarding the sale, or the withholding from sale of any portion of the effects.

15. The effects to be sold will be disposed of in the most advantageous manner either by private sale or by fair and open auction. Such auction will be held in the presence of a member of the committee of adjustment.

16. Such of the effects as the committee of adjustment do not sell by auction may be sent by them to the representative or next of kin of the deceased; but where it appears desirable to do so, the committee may annex any securities, share certificates, life assurance or other policies, bank deposit receipts or other documents of value to the original inventory and account for transmission to the War Office or India Office, as the case may be.

17. The practice of employing a non-commissioned officer in selling by auction such of the effects of a deceased officer or soldier as are not otherwise disposed of, will be adopted only in cases in which it appears to be most advantageous for the estate of the deceased. When much trouble and responsibility are thrown upon the non-commissioned officer by his being so employed, a commission, payable out of the effects, at a rate varying from two to five per cent. on the amount of the produce of the sale, according to the greater or less degree of trouble and responsibility thereby caused, may be paid to him, and charged in the statement of the accounts of the deceased, the man's receipt for the amount being annexed thereto, together with the certificate of the commanding officer that his employment as auctioneer was most advantageous for the estate, and that the duties performed by him justify the remuneration charged.

(Section 6 of the Act, § (4)).

18. The committee of adjustment will discharge all debts that have accrued in the same station, colony, or command which are proved to their satisfaction, except where the death occurs in India, and the deceased is not a soldier of His Majesty's British forces, in which case their discharge is provided for in Section 26 of the Act and paragraph 54 of these regulations.

(Section 6 of the Act, § (6).)

19. Where the deceased was an officer, not having been at the time of his death a member of the Indian services, and has died elsewhere than in India, the committee of adjustment assembled elsewhere than in India will lodge the surplus in the hands of the district paymaster for credit in his next account, taking a receipt for the amount. This receipt, together with the inventory and the account of debts and credits, will be transmitted by the committee to the Secretary of the War Office, through the officer commanding at the station. Any committee of adjustment assembled under paragraph 5 to deal with the affairs of the deceased, if any, in India, will lodge any surplus in the hands of the Controller of Military Accounts for remittance to the War Office, forwarding a report of the action taken and the inventory and account of debts and credits to the Secretary of the War Office as above.

20. Where the deceased was a non-commissioned officer or man serving in His Majesty's British forces, and was in the pay of the Indian Government, the committee of adjustment will lodge the surplus in the hands of the officer paying the corps, who will credit the amount in the next casualty return. Where the deceased was not in the pay of the Indian Government, the surplus will be credited in the pay list of the troop, squadron, battery, or company to which the deceased belonged.

21. In cases where the deceased not having been at the time of his death a non-commissioned officer or man of His Majesty's British forces has died in India, or was at the time of his death a member of the Indian Services, the committee of adjustment will remit the surplus to the secretary to the Government of India in the Military Department.

22. Whenever a committee of adjustment remit or lodge a surplus they will send or lodge therewith the original inventory and account, except as provided in paragraph 19.

23. In every case the officer present at the sale of effects will furnish a certified statement of the particulars thereof, which will

be attached to the original inventory and account, and he will cause the amount produced by such sale to be carried to the credit of the account.

24. In cases in which paragraph 20 applies, the paymaster or other officer paying the corps will ascertain that all the articles reported in the inventory furnished to him as forthcoming are accounted for in the particulars of the sale, and will annex the inventory and account, and the particulars of the sale, to the current account or casualty return rendered by him, and will state therein the balance, debtor or creditor. In cases in which paragraph 21 applies, the military secretary will have the inventory and account, and the statement of the particulars of the sale, compared and examined.

25. Where a regiment of His Majesty's British forces is stationed in India, monthly casualty returns, made up according to the printed form, will be transmitted to the Secretary of State for War through the controller of military accounts in the Presidency, and sums therein mentioned will be stated in sterling money.

With respect to His Majesty's Indian forces, similar returns will be transmitted to the Secretary of State in Council of India.

26. Casualty returns from India will specify in each case whether the deceased was known to be possessed of property of any description whatever besides that stated in the casualty return, but not actually realised when the return is made. If any such other property is known, a statement of the particulars thereof, made out in duplicate, will be forwarded with the casualty return, and a memorandum will be annexed thereto of the steps that have been taken for recovering or realising the same under the Act. If no such other property is known, a memorandum to that effect will be made on the casualty return.

27. Where a deceased officer, warrant officer, non-commissioned officer, or man leaves a will, then, if representation is not taken out, the original will, and, if representation is taken out, a complete and authenticated copy of the will, will be sent, along with the inventory, account and other papers, by the committee of adjustment, and will be transmitted to the Secretary of State for War, or the Secretary of State in Council in India, as the case may require. Where the original will is sent, a complete and authenticated copy of it will be first made under the direction of the committee of adjustment, and will be kept with the regimental or other proper records.

(Section 7 of the Act.)

28. Payments to the next of kin, or legal representatives of deceased soldiers of His Majesty's British forces will be made in accordance with the directions on this point in the Financial Instructions. As regards deceased officers, where representation is not taken out, the surplus will be disposed of as directed in paragraph 19. If, however, the death occurs in India, or the deceased was at the time of his death a member of the Indian Services, the surplus will be remitted by the Secretary to the Government of India in the Military Department, as directed in paragraph 55.

(Section 9 of the Act.)

29. In cases in which representation is not taken out, payment will be made to or for the benefit of each person appearing to be

beneficially interested in an estate; but in special cases, where it appears desirable, payment of the whole residue will be made to the person entitled to take out representation to the deceased.

(Section 10 of the Act.)

30. The notice under Section 10 of the Act will be published in the London Gazette as soon as may be convenient, and will, with such variations as circumstances require, specify the name, rank, and regiment of the deceased, and the amount of the residue.

(Section 14 of the Act.)

31. The committee of adjustment (in India) will deliver over the effects secured by them to the Administrator-General only in case they apprehend that considerable difficulty or delay may arise in or about the collection or realisation of the effects and credits of the deceased, in consequence of the character of any investment, or in consequence of it being requisite to institute some action or suit in relation to the property of the deceased, or in case there is some other peculiar circumstance connected with the property making it, in the judgment of the committee, expedient to take that course.

32. Where the committee of adjustment deliver over effects to an Administrator-General, they will do so as soon as practicable after they have determined to take that course.

33. Where the committee of adjustment deliver over effects to an Administrator-General, they will forthwith forward, together with the inventory and account, a report of the facts and circumstances, as follows:—

Where the deceased was a non-commissioned officer or man of His Majesty's British forces, to the Secretary of the War Office; in other cases, to the Secretary to the Government of India in the Military Department.

34. The Administrator-General will remit to the Secretary of State for India the balance of the estate as soon as possible after the discharge of all debts and liabilities, and after the payment to any persons resident in India of the share or shares to which they may be legally entitled. He will further submit to the Government of India, for transmission to the India Office, a half-yearly return of these estates and the manner in which they have been disposed of.

(Section 22 of the Act.)

35. In the case of an army paymaster, the committee of adjustment will, if possible, comprise a member of the Army Pay Department.

The committee of adjustment are to forthwith remit the surplus to the Secretary of State for War, through the district account or casualty return (see paragraphs 19 and 20), and the residue will then be applied in discharge of any preferential claims that may remain unsettled, or of any claims in respect of public accounts for which the deceased was responsible. Any portion of the residue then remaining will be paid or applied in accordance with Section 9 of the Act.

(Section 23 of the Act.)

36. In all cases of desertion, absence without leave for 21 days, and of a soldier being delivered up as an apprentice, or being convicted of felony by the civil power, the committee of adjustment will be composed in like manner as in the respective cases of death,

and the foregoing regulations relative to the respective cases of death will be applied as far as the difference of the circumstances will admit.

37. The kit of an apprentice will be disposed of as provided in the Clothing Regulations, and should he be in possession of any plain clothes when claimed by his master, such clothes will not be sold but returned to the man.

38. In the case of the desertion of a soldier the effects (other than the free kit of necessaries) will be sold as soon as may be convenient after he has been declared a deserter, or been absent without leave for 21 days (but within three months from the date of desertion). His necessaries will be retained in store for six months as laid down in the Clothing Regulations for re-issue to him in the event of his rejoining. After six months the articles will be available for issue to any rejoined deserter, the value of the necessaries so issued being credited to the non-effective account of the original owner. If, however, the deserter should rejoin while any articles of his necessaries remain unsold, and if he should require such articles for his military purposes, the articles will be returned to him, and he will not be subject to forfeiture in respect thereof.

39. The proceeds of the sale of the effects will be credited in a statement of the deserter's accounts (his "non-effective account"), exhibiting his assets and such of his liabilities as would, under the Act, be preferential charges against the estate. Any sum deposited by the soldier in the regimental savings bank will also be credited in the non-effective account.

40. The balance on the non-effective account shall be applied, so far as it will extend, for the purposes and in the order following, that is to say—

(*a*) In payment of any debts due to the public on account of articles of public property made away with, or otherwise lost on desertion, and of any other debts that may be due to the public.

(*b*) In payment or satisfaction of such other debts or liabilities of or claims against the soldier, as the Secretary of State for War or the Secretary of State in Council of India shall think fit to allow, including herein claims by reason of any criminal or wrongful act of the soldier.

41. Should any balance then remain the amount will be credited in the accounts of the Paymaster or other accountant in whose accounts the pay of the man to the date of desertion is charged.

42. If the soldier shall rejoin or be recovered to the service within three years from the date of desertion, or, in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable under paragraph 40, may be applied in payment of any debts due on account of articles of necessaries issued to the soldier on his rejoining, or of any debts due on account of his re-equipment.

43. If the soldier shall rejoin, or be recovered to the service within one year from the date of desertion, or in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42 may be repaid to the soldier himself.

44. Any balance remaining after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42,

shall, at the expiration of three years from the date of desertion, be considered as forfeited, and will be disposed of as the Secretary of State for War or the Secretary of State in Council of India respectively may determine.

45. Any articles of private property which may be in the possession of the deserter on his apprehension, or on his rejoining from desertion, shall be sold, and the proceeds, together with any money of which he may be similarly in possession, shall be applied in payment of the debt (if any) on his non-effective account, and any surplus shall be disposed of as provided in paragraphs 40, 42, and 43. If, however, the deserter be not retained in the service, but discharged, any plain clothes of which he may be in possession shall not be sold, but be utilised in accordance with the provisions of the clothing regulations.

46. Should there be reason to believe that any property or money left behind by the soldier on his desertion, or subsequently found in his possession, has been obtained by theft or fraud, the Secretary of State shall be empowered, at his discretion, to restore such property, or to apply the amount realised by the sale thereof, or the amount of such money towards making good the loss caused by the theft or fraud.

47. In the case of a soldier being delivered up as an apprentice, or convicted of felony by the civil power, the surplus remaining in the hands of the committee of adjustment, together with any balance of pay that may be due, will be applied in all respects in the same manner as mentioned in paragraphs 40, 42, and 43, except that no payment of the residue, under paragraph 43, shall be made to any soldier convicted of felony until he shall have undergone such punishment as he may have been sentenced to for the same.

* * * * * * * *

(Section 24 of the Act.)

49. In cases of insanity the committee of adjustment will be composed in like manner as in the respective cases of death.

50. The foregoing regulations relative to the respective cases of death will be applied in a case of insanity, as far as the difference of the circumstances will admit; except that whenever possible the sale of effects will be deferred until, in the case of an officer, he is removed from the active list, and in the case of a soldier until he is discharged; and further that the committee of adjustment will forthwith remit or lodge the money remaining in their hands to or in the hands of the army paymaster, military secretary, or other officer or person to whom or in whose hands they are to remit or lodge the surplus in the respective cases of death, and he will forthwith transmit the same to the Secretary of State for War, or the Secretary of State in Council of India, as the case may require.

51. The same will be then, with all convenient speed, applied for the benefit of the officer or soldier to whom it belongs, in such manner as the Secretary of State for War or the Secretary of State in Council of India (as the case may be) in his discretion thinks fit.

(Section 26 of the Act, § (1).)

52. As soon as possible after receiving the surplus from the committee of adjustment, the Secretary to the Government of India in the Military Department will cause the notice under

Section 26 (1) of the Act, to be published by advertisement in the Government Gazette of the Presidency in which the deceased was last quartered.

53. The notice will be in the following form, with such variations as circumstances require:—

The Regimental Debts Act, 1893, *Section* 26, § (1).

Notice is hereby given :

First. That information has been received by me of the deaths of the Officers, Warrant Officers, non-commissioned officers, and soldiers named and described in the subjoined table.

Secondly. That there have been received by me, as the surplus of their respective properties, the amount set opposite their respective names in the same table.

Thirdly. That all claims by creditors against the respective properties of the deceased are to be lodged with me within two calendar months from the date of this notice.

(Signed) A.B.

Military Secretary.

Calcutta, the day of

The Table before referred to.

Number.	Christian name and surname in full of Officer, Warrant Officer, non-commissioned officer, or soldier deceased.	Branch of Service to which deceased belonged.	No. of regiment.	Rank of deceased.	Place of death.	Date of death.	Amount of surplus.	Whether deceased is known to have left a will or not.	Other particulars respecting deceased and his property; and remarks.	Number.
1										1
2										
3										
4										4

54. At the expiration of two months from the date of the first publication of the notice, the military secretary will, in the following cases, proceed to discharge demands of such claimants as lodge claims with him :—

(1.) If the surplus does not exceed 1,000 rupees, and the claims lodged do not exceed in the whole 10 per cent. on the amount of the surplus.

(2.) If the surplus exceeds 1,000 rupees, and the claims lodged do not exceed in the whole the sum of 100 rupees.

(Section 26 of the Act, § (2).)

55. In those cases in which, after the discharge of claims under paragraph 54 of these regulations, the military secretary does not dispose of the surplus locally under Section 7 of the Act, he will, as soon as possible after two months, and within six months after the first publication of the notice, remit the surplus as follows :—

In the case of members of the Indian Services, to the Secretary of State in Council of India.

In other cases to the Secretary of State for War.

NOTE.—The term "Indian Services" in these regulations comprises officers of His Majesty's Indian Army and His Majesty's Indian Medical Service, and officers and warrant officers of departments under the Government of India and the Commander-in-Chief in India.

Royal Warrant—Soldiers' Effects Fund.

VICTORIA R. & I.

WHEREAS by our Warrants of the 12th June, 1884, and the 16th July, 1887, We are pleased to make regulations for carrying into effect the provisions of Section 18 of the Regimental Debts Act, 1863, respecting the undisposed of residues of the effects of persons dying on service while subject to military law ;

AND WHEREAS by the Regimental Debts Act, 1893, which comes into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed ;

AND WHEREAS We deem it expedient by this Our Warrant to make regulations for carrying into effect the provisions of Section 10, § (2), of the Regimental Debts Act, 1893 ;

NOW, THEREFORE, OUR WILL AND PLEASURE IS, and We do by this Our Warrant direct, as follows :—

1. Our Warrants of the 12th June, 1884, and the 16th July, 1887, shall be and the same are hereby cancelled as from the 1st October, 1893.

2. All such undisposed of and unappropriated residues, mentioned in Section 10, § (2), of the Regimental Debts Act, 1893, as are now in the hands of Our Secretary of State for War, and are applicable as mentioned in that sub-section, together with any income or accumulations of income accrued therefrom, shall forthwith, and all such undisposed of and unappropriated residues, as shall, from time to time, hereafter be in the hands of Our Secretary of State for War for the time being, together with any income and accumulations of income accrued therefrom, shall, from time to time, until We shall by Our Warrant direct to the contrary, be paid over and transferred unto the Official Trustees for the time being of the Patriotic Fund ; and We do hereby order and direct the payment over and transfer of the said residues and income and accumulations of income accordingly.

3. All residues and income and accumulations of income so to be paid over or transferred as aforesaid from time to time, shall form one fund to be called the "Soldiers' Effects Fund," to be under the management and control of the Executive Committee for the time being of Our Commissioners for the time being of the said

Patriotic Fund, but subject to and under such orders and regulations as may from time to time be made by Our said Commissioners or any three or more of them; and shall be applied in payment of such compassionate, annual, or other allowances, to the widows and children or other dependent relatives of soldiers dying on service, or within six months after discharge, and generally in such manner for the benefit of such widows and children or other dependent relatives of soldiers dying as aforesaid, as the said Executive Committee, or any two or more of them, shall, from time to time, think fit, preferential consideration being given to the widows and children of soldiers on the married establishment, who—

(*a*) Were killed in action, or died of wounds received in action, or from illness which can be directly traced to fatigue, privation, or exposure incident to active operations in the field, within 12 months of sustaining such wound or contracting such illness;

(*b*) Died from an injury directly traceable to military duty within 12 months of sustaining such injury;

(*c*) Died from illness directly traceable to fatigue, privation, or exposure in the performance of military duty.

4. The widows and children of Mobilised Army Reserve men dying as aforesaid shall be considered as on the married establishment.

5. The said "Soldiers' Effects Fund" shall be held by the Official Trustees for the time being of the said Patriotic Fund, on behalf of Our said Commissioners for the time being as having the management thereof. Our said Commissioners shall be at liberty to invest the said "Soldiers' Effects Fund" upon such investments as they or any three or more of them shall from time to time think fit, and shall keep separate accounts of the said Fund.

6. This Warrant shall come into operation on the 1st October, 1893.

Given at Our Court at Osborne, this 22nd day of August, 1893, in the 57th Year of Our Reign.

By Her Majesty's Command,

H. CAMPBELL-BANNERMAN.

TERRITORIAL AND RESERVE FORCES ACT, 1907.

ARRANGEMENT OF SECTIONS.

Part I.—COUNTY ASSOCIATIONS.

Section.
1. Establishment of associations.
2. Powers and duties of associations.
3. Expenses of association.
4. Regulations.
5. Joint committees of associations.

Part II.—TERRITORIAL FORCE.

Raising and Maintenance of Force.

6. Raising and number of Territorial Force.

Government, Discipline, and Pay.

7. Government, discipline, and pay of Territorial Force.
8. First appointments to lowest rank of officers of the Territorial Force.

Enlistment, Service, Discharge.

9. Enlistment, term of service, and discharge.
10. Application of certain sections of the Army Act.
11. Enlistment of men discharged with disgrace from Army or Navy, or contrary to rules.
12. Enlistment into army reserve.
13. Area of service of Territorial Force.

Training.

14. Preliminary training of recruits of Territorial Force.
15. Annual training.
16. Laying of draft Orders in Council relating to training before Parliament.

Embodiment.

Section.
17. Embodiment of Territorial Force.
18. Disembodying of Territorial Force.

Notices.

19. Service and publication of notices.

Offences.

20. Punishment for failure to attend on embodiment.
21. Punishment for failure to fulfil training conditions.
22. Wrongful sale, &c., of public property.

Civil Rights and Exemptions.

23. Civil rights and exemptions.

Legal Proceedings.

24. Trial of offences and application of penalties.
25. Supplemental provisions as to trial of offences.
26. Evidence.

Miscellaneous.

27. Exercise of powers vested in holder of military office.
28. Application of enactments.

Transitory.

29. Transitory provisions.

PART III.—RESERVE FORCES.

30. Enlistment and terms of service of special reservists.
31. Agreements as to extension of service.
32. Liability of reservists to be called out.
33. Power to form battalions, &c., of reservists.
34. Transfer of Militia battalions to reserve.
35. Amendment of 45 & 46 Vict., c. 48, s. 6 (4)
36. Commissions in reserve of Officers not to vacate seat in Parliament.

PART IV.—SUPPLEMENTAL.

37. Provisions as to orders, schemes, and regulations.
38. Definitions.
39. Special provisions as to special places.
40. Application to Scotland and the Isle of Man.
41. Short title.
SCHEDULES.

TERRITORIAL AND RESERVE FORCES ACT, 1907.

[7 Edw. 7, c. 9.]

A.D. 1907

An Act to provide for the reorganisation of His Majesty's Military Forces and for that purpose to authorise the establishment of County Associations, and the raising and maintenance of a Territorial Force, and for amending the Acts relating to the Reserve Forces. [2nd August, 1907.]

Part I.

Part I.—COUNTY ASSOCIATIONS.

s. 1. Establishment of associations.

1.—(1) For the purposes of the reorganisation under this Act of His Majesty's military forces other than the regulars and their reserves, and of the administration of those forces when so reorganised, and for such other purposes as are mentioned in this Act, an association may be established for any county in the United Kingdom, with such powers and duties in connection with the purposes aforesaid as may be conferred on it by or under this Act.

(2) Associations shall be constituted, and the members thereof shall be appointed and hold office in accordance with schemes to be made by the Army Council.

(3) Every such scheme shall provide—

(*a*) For the date of the establishment of the association:

(*b*) For the incorporation of the association by an appropriate name, with power to hold land for the purposes of this Act without licence in mortmain:

(*c*) For constituting the lieutenant of the county, or failing him such other person as the Army Council may think fit, president of the association:

(*d*) For the appointment of such number of officers representative of all arms and branches of the Territorial Force raised under this Act within the county (not being less than one-half of the whole number of the association) as may be specified in the scheme:

(*e*) For the appointment by the Army Council, where it appears desirable, and after consultation with, and on the recommendation of, the authorities to be represented, of representatives of county and county borough councils and universities wholly or partly within the county:

(*f*) For the appointment of such number of co-opted members

as the scheme may prescribe, including, if thought desirable, representatives of the interests of employers and workmen :

(*g*) For the appointment by the Army Council during the first three years after the passing of this Act, and subsequently for the election of a chairman and vice-chairman by the association, and for defining their powers and duties :

(*h*) For the mode of appointment, term of office, and rotation of members of the association, and the filling of casual vacancies :

(*i*) For the appointment by the association, subject to the approval of the Army Council, of a secretary and other officers of the association, and the accountability of such officers, and for the provision of offices :

(*j*) For the procedure to be adopted including the appointment of committees and the delegation to committees of any of the powers or duties of the association :

(*k*) For enabling such general officers of any part of His Majesty's forces, and not being members of the association, as may be specified in the scheme, or officers deputed by them, to attend the meetings of the association and to speak, but not to vote :

(*l*) For dividing the county, where on account of its size or population it seems desirable to do so, into two or more parts, and for constituting sub-associations for the several parts, and for apportioning amongst the several sub-associations all or any of the powers and duties of the association, and regulating the relations of sub-associations to the association and to one another.

(4) A scheme may contain any consequential, supplemental, or transitory provisions which may appear to be necessary or proper for the purposes of the scheme, and also as respects any matter for which provision may be made by regulations under this Act and for which it appears desirable to make special provision affecting the association established by the scheme.

(5) All schemes made in pursuance of this Part of this Act shall be laid before both Houses of Parliament.

(6) Until an Order in Council has been made under this Act for transferring to the Territorial Force the units of the Yeomanry and Volunteers of any county, references in this section to the Territorial Force shall as respects that county be construed as including references to the Yeomanry and Volunteers.

Powers and duties of associations.

2.—(1) It shall be the duty of an association when constituted to make itself acquainted with and conform to the plan of the Army Council for the organisation of the Territorial Force within the county and to ascertain the military resources and capabilities of the county, and to render advice and assistance to the Army Council and to such officers as the Army Council may direct, and an association shall have, exercise, and discharge such powers and duties connected with the organisation and administration of His Majesty's military forces as may for the time being be transferred or assigned to it by order of His Majesty signified under the hand of a Secretary of State or, subject thereto, by regulations under this Act, but an association shall not have any powers of command or training over any part of His Majesty's military forces.

(2) The powers and duties so transferred or assigned may include

A.D. 1907. Part I. ss. 2-3.

any powers conferred on or vested in His Majesty, and any powers or duties conferred or imposed on the Army Council or a Secretary of State, by statute or otherwise, and in particular respecting the following matters:—

(*a*) The organisation of the units of the Territorial Force and their administration (including maintenance) at all times other than when they are called out for training or actual military service, or when embodied:

(*b*) The recruiting for the Territorial Force both in peace and in war, and defining the limits of recruiting areas:

(*c*) The provision and maintenance of rifle ranges, buildings, magazines, and sites of camps for the Territorial Force:

(*d*) Facilitating the provision of areas to be used for manœuvres:

(*e*) Arranging with employers of labour as to holidays for training, and ascertaining the times of training best suited to the circumstances of civil life:

(*f*) Establishing or assisting cadet battalions and corps and also rifle clubs, provided that no financial assistance out of money voted by Parliament shall be given by an association in respect of any person in a battalion or corps in a school in receipt of a parliamentary grant until such person has attained the age of sixteen:

(*g*) The provision of horses for the peace requirements of the Territorial Force:

(*h*) Providing accommodation for the safe custody of arms and equipment:

(*i*) The supply of the requirements on mobilisation of the units of the Territorial Force within the county, in so far as those requirements are directed by the Army Council to be met locally, such requirements where practicable to be embodied in regulations which shall be issued to county associations from time to time, and on the first occasion not later than the first day of January one thousand nine hundred and nine:

(*j*) The payment of separation and other allowances to the families of men of the Territorial Force when embodied or called out on actual military service:

(*k*) The registration in conjunction with the military authorities of horses for any of His Majesty's forces:

(*l*) The care of reservists and discharged soldiers.

Expenses of association.

3.—(1) The Army Council shall pay to an association, out of money voted by Parliament for army services, such sums as, in the opinion of the Army Council, are required to meet the necessary expenditure connected with the exercise and discharge by the association of its powers and duties.

(2) An association shall submit to the Army Council annually, at the prescribed time, and may submit at any other time for any special purpose, in the prescribed form and manner, a statement of its necessary requirements, and all payments to an association by the Army Council shall be made upon the basis of such statements in so far as they are approved by the Army Council.

(3) Subject to regulations under this Act, all money so paid to an association shall be applicable to any of the purposes specified in the approved statements in accordance with which the money

has been granted, but not otherwise except with the written consent of the Army Council:

Provided that nothing in this section shall be construed as enabling the Army Council to give their consent to the application of money to any purpose to which, apart from this section, it could not lawfully be applied, or to give their consent, without the authority of the Treasury, in any case in which, apart from this section, the authority of the Treasury would be required.

(4) All other money received by an association (except such money, if any, as may be received by it for specified purposes) shall be available for the purposes of any of its powers and duties.

(5) An association shall cause its accounts to be made up annually and audited in such manner as may be prescribed, and shall send copies of its accounts as audited, together with any report of the auditors thereon, to the Army Council.

(6) Regulations made for the purposes of this section shall be subject to the consent of the Treasury.

(7) The members of an association shall not be under any pecuniary liability for any act done by them in their capacity as members of such association in carrying out the provisions of this Act.

Regulations.

4.—(1) Subject to the provisions of this Act, the Army Council may make regulations for carrying this Part of this Act into effect, and may by those regulations, amongst other things, provide for the following matters:—

(*a*) For regulating the manner in which powers are to be exercised and duties performed by associations, and for specifying the services to which money paid by the Army Council is to be applicable.

(*b*) For authorising and regulating the acquisition by or on behalf of an association of land for the purposes of this Act and the disposal of any land so acquired:

(*c*) For authorising and regulating the borrowing of money by an association:

(*d*) For authorising the acceptance of any money or other property, and the taking over of any liability, by an association, and for regulating the administration of any money or property so acquired and the discharge of any liability so taken over:

(*e*) For facilitating the co-operation of an association with any other association, or with any local authority or other body, and for providing by the constitution of joint committees or otherwise for co-operative action in the organisation and administration of divisions, brigades, and other military bodies and for the provision of assistance by one association to another:

(*f*) For affiliating cadet corps and battalions, rifle clubs, and other bodies to the Territorial Force or any part thereof:

(*g*) For or in respect of anything by this Part of this Act directed or authorised to be done or provided by regulations or to be done in the prescribed manner:

(*h*) For the application for the purposes of this Part of this Act, as respects any matters to be dealt with by regulations, of any provision in any Act of Parliament dealing with the like matters, with the necessary modifications or adapta-

A.D. 1907.

Part I.

ss. 4-7.

tions, and in particular of any provisions as to the acquisition of land by or on behalf of volunteer corps.

(2) All regulations made in pursuance of this Part of this Act shall be applicable to all associations, except in so far as may be otherwise provided by the regulations or by any scheme made under this Part of this Act.

(3) All regulations made under this Part of this Act shall be laid before both Houses of Parliament as soon as may be after they are made.

Joint committees of associations.

5.—(1) Any county associations may from time to time join in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested.

(2) Any association appointing a joint committee under this subsection may delegate to it any power which such association might exercise for the purpose for which the committee is appointed.

(3) Subject to the terms of delegation any such joint committee shall in respect of any matter delegated to it have the same power in all respects as the associations appointing it.

(4) The costs of a joint committee shall be defrayed by the associations by whom it has been appointed, in such proportion as may be agreed between them, and the accounts of such joint committees and their officers shall for the purposes of the provisions of this Act be deemed to be accounts of the associations appointing them and of their officers.

Part II.—Territorial Force.

Part II.

Raising and Maintenance of Force.

Raising and number of Territorial Force.

6. It shall be lawful for His Majesty to raise and maintain a force, to be called the "Territorial Force," consisting of such number of men as may from time to time be provided by Parliament.

Government, Discipline, and Pay.

Government, discipline, and pay of Territorial Force.

7.—(1) Subject to the provisions of this Part of this Act, it shall be lawful for His Majesty, by order signified under the hand of a Secretary of State, to make orders with respect to the government, discipline, and pay and allowances of the Territorial Force, and with respect to all other matters and things relating to the Territorial Force, including any matter by this Part of this Act authorised to be prescribed or expressed to be subject to orders or regulations.

(2) The said orders may provide for the formation of men of the Territorial Force into regiments, battalions, or other military bodies, and for the formation of such regiments, battalions, or other military bodies into corps, either alone or jointly with any other part of His Majesty's forces, and for appointing, transferring, or attaching men of the Territorial Force to corps, and for posting, attaching, or otherwise dealing with such men within the corps;

and may provide for the constitution of a permanent staff, including adjutants and staff sergeants who shall, except in special circumstances certified by the general officer commanding, be members of His Majesty's regular forces; and may regulate the appointment, rank, duties, and numbers of the officers and non-commissioned officers of the Territorial Force.

(3) Subject to the provisions of any such order, the Army Council may make general or special regulations with respect to any matter with respect to which His Majesty may make orders under this section.

(4) Provided that the said orders or regulations shall not—

(*a*) affect or extend the term for which, or the area within which, a man of the Territorial Force is liable under this Part of this Act to serve; or

(*b*) authorise a man of the Territorial Force when belonging to one corps to be transferred without his consent to another corps; or

(*c*) when the corps of a man of the Territorial Force includes more than one unit, authorise him when not embodied to be posted, without his consent, to any unit other than that to which he was posted on enlistment; or

(*d*) When the corps of a man of the Territorial Force includes any battalion or other body of the regular forces, authorise him to be posted without his consent to that battalion or body.

(5) Where a man of the Territorial Force was enlisted or re-engaged before the date of any order or regulation under this Part of this Act, nothing in such order or regulation shall render him liable without his consent to be appointed, transferred, or attached to any military body to which he could not without his consent have been appointed, transferred, or attached if the said order or regulation had not been made.

(6) Orders and regulations under this section may provide for the formation of a reserve division of the Territorial Force, and may relax or dispense with any of the provisions of this Act relating to the training of the men of the Territorial Force so far as regards their application to men in the reserve division, and may, notwithstanding anything in this section, authorise a man in the reserve division to be transferred from one corps to another, so, however, that a man in the reserve division shall not, without his consent, be transferred to a corps of another arm.

(7) All orders and general regulations made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

First appointments to lowest rank of officers of the Territorial Force.

8. Subject to any directions which may be given by His Majesty, first appointments to the lowest rank of officer in any unit of the Territorial Force shall be given to persons recommended by the president of the association for the county, if a person approved by His Majesty is recommended by the president for any such appointment within thirty days after notice of a vacancy for the appointment has been given to the president in the prescribed manner, provided he fulfils all the prescribed conditions as to age, physical fitness, and educational qualifications; and, where a unit comprises men of the Territorial Force of two or more counties, the recommenda-

tions for such appointments shall be made by the presidents of the associations for the respective counties in such rotation or otherwise as may be prescribed.

Enlistment, Service, Discharge.

Enlistment, term of service, and discharge.

9.—(1) Subject to the provisions of this Part of this Act, all men of the Territorial Force shall be enlisted by such persons and in such manner and subject to such regulations as may be prescribed:

Provided that every man enlisted under this Part of this Act—

(*a*) Shall be enlisted for a county for which an association has been established under this Act and shall be appointed to serve in such corps for that county or for an area comprising the whole or part of that county as he may select, and, if that corps comprises more than one unit within the county, shall be posted to such one of those units as he may select:

(*b*) Shall be enlisted to serve for such a period as may be prescribed, not exceeding four years, reckoned from the date of his attestation:

(*c*) May be re-engaged within twelve months before the end of his current term of service for such a period as may be prescribed not exceeding four years from the end of that term, and on re-engagement shall make the prescribed declaration before a justice of the peace or an officer, and so from time to time.

(2) A man enlisted in the Territorial Force, until duly discharged in the prescribed manner, shall remain subject to this Part of this Act as a man of the Territorial Force.

(3) Any man of the Territorial Force shall, except when a proclamation ordering the Army Reserve to be called out on permanent service is in force, be entitled to be discharged before the end of his current term of service on complying with the following conditions:—

(i) Giving to his commanding officer three months' notice in writing, or such less notice as may be prescribed, of his desire to be discharged; and

(ii) Paying for the use of the association for the county for which he was enlisted such sum as may be prescribed not exceeding five pounds; and

(iii) Delivering up in good order, fair wear and tear only excepted, all arms, clothing, and appointments, being public property, issued to him, or, in cases where for any good and sufficient cause the delivery of the property aforesaid is impossible, on paying the value thereof:

Provided that it shall be lawful for the association for the county, or for any officer authorised by the association, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, to dispense either wholly or in part with all or any of the above conditions.

(4) A man of the Territorial Force may be discharged by his commanding officer for disobedience to orders by him while doing any military duty, or for neglect of duty, or for misconduct by him as a man of the Territorial Force, or for other sufficient cause, the

existence and sufficiency of such cause to be judged of by the commanding officer:

Provided that any man so discharged shall be entitled to appeal to the Army Council who may give such directions in any such case as they may think just and proper.

(5) Where the time at which a man of the Territorial Force would otherwise be entitled to be discharged occurs while a proclamation ordering the Army Reserve to be called out on permanent service is in force, he may be required to prolong his service for such further period, not exceeding twelve months, as the competent military authority may order.

Application of certain sections of the Army Act.

10.—(1) The following sections of the Army Act shall apply to the Territorial Force (that is to say):—

Section eighty (relating to the mode of enlistment and attestation);

Section ninety-six (relating to the claims of masters to apprentices); 44 & 45 Vict. c. 58.

Section ninety-eight (imposing a fine for unlawful recruiting);

Section ninety-nine (making recruits punishable for false answers);

So much of section one hundred as relates to the validity of attestation and enlistment or re-engagement;

Section one hundred and one (relating to the competent military authority); and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence.

And the said sections shall apply in like manner as if they were herein re-enacted, with the substitution—

(*a*) Of "Territorial Force" for "regular forces," and of "man of the Territorial Force" for "soldier"; and

(*b*) (In section one hundred) of "has not within three months claimed his discharge on any ground on which he is entitled under this subsection to do so" for "has received pay as a soldier of the regular forces during three months."

(2) A recruit may be attested by any lieutenant or deputy-lieutenant of any county in the United Kingdom, or by an officer of the regular or Territorial forces, and the sections of the Army Act in this section mentioned, and also section thirty-three of the same Act, shall as applied to the Territorial Force be construed as if a justice of the peace in those sections included such lieutenant, deputy lieutenant, or officer.

Enlistment of men discharged with disgrace from Army or Navy, or contrary to rules.

11.—(1) If a person—

(*a*) Having been discharged with disgrace from any part of His Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the Territorial Force without declaring the circumstances of his discharge or dismissal; or

(*b*) Is concerned when subject to military law in the enlistment for service in the Territorial Force of any man, whom he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against the Army Act or this Act; or

(*c*) Wilfully contravenes when subject to military law any

A.D. 1907.

Part II.

ss. 11-14.

enactments, orders, or regulations which relate to the enlistment or attestation of men in the Territorial Force, he shall be guilty of an offence, and shall, whether otherwise subject to military law or not, be liable to be tried by court martial, and on conviction to suffer such punishment as is imposed for the like offence by section thirty-two or thirty-four of the Army Act, as the case may be, and may be taken into military custody.

(2) For the purpose of this section the expression "discharged with disgrace" means discharged with ignominy, discharged as incorrigible and worthless, or discharged for misconduct, or discharged on account of a conviction for felony or a sentence of penal servitude.

Enlistment into army reserve.

12. If a man of the Territorial Force enlists into the army reserve without being discharged from the Territorial Force, the terms and conditions of his service whilst he remains in the army reserve shall be those applicable to him as a man belonging to the army reserve, and not those applicable to him as a man of the Territorial Force.

Area of service of Territorial Force.

13.—(1) Any part of the Territorial Force shall be liable to serve in any part of the United Kingdom, but no part of the Territorial Force shall be carried or ordered to go out of the United Kingdom.

(2) Provided that it shall be lawful for His Majesty, if he thinks fit, to accept the offer of any part or men of the Territorial Force, signified through their commanding officer, to subject themselves to the liability—

(*a*) To serve in any place outside the United Kingdom; or

(*b*) To be called out for actual military service for purposes of defence at such places in the United Kingdom as may be specified in their agreement, whether the Territorial Force is embodied or not;

and, upon any such offer being accepted, they shall be liable, whenever required during the period to which the offer extends, to serve or be called out accordingly.

(3) A person shall not be compelled to make such an offer, or be subjected to such liability as aforesaid, except by his own consent, and a commanding officer shall not certify any voluntary offer previously to his having explained to every person making the offer that the offer is to be purely voluntary on his part.

Training.

Preliminary training of recruits of Territorial Force.

14.—(1) Every man of the Territorial Force shall, by way of preliminary training, during the first year of his original enlistment—

(*a*) If so provided by Order in Council, be trained at such places within the United Kingdom, at such times, and for such periods, not exceeding in the whole the number of days specified by the Order in Council, as may be prescribed, and may for that purpose be called out once or oftener; and

(*b*) Whether such an Order in Council has been made or not, attend the number of drills and fulfil the other conditions prescribed for a recruit of his arm or branch of the service.

(2) The requirement to attend training and drills, and to fulfil conditions under this section, shall be in addition to the requirement to attend training and drills and to fulfil conditions for the purpose of annual training.

Annual training.

15.—(1) Subject to the provisions of this section, every man of the Territorial Force shall, by way of annual training—

(*a*) Be trained for not less than eight nor more than fifteen, or in the case of the mounted branch eighteen, days in every year at such times and at such places in any part of the United Kingdom as may be prescribed, and may for that purpose be called out once or oftener in every year:

(*b*) Attend the number of drills and fulfil the other conditions relating to training prescribed for his arm or branch of the service:

Provided that the requirements of this section may be dispensed with in whole or in part—

(i) As respects any unit, by the prescribed general officer; and

(ii) As respects an individual man, by his commanding officer subject to any general directions by the prescribed general officer.

(2) His Majesty in Council may—

(*a*) Order that the period of annual training in any year of all or any part of the Territorial Force be extended, but so that the whole period of annual training be not more than thirty days in any year; or

(*b*) Order that the period of annual training in any year of all or any part of the Territorial Force be reduced to such time as to His Majesty may seem fit; or

(*c*) Order that in any year the annual training of all or any part of the Territorial Force be dispensed with.

(3) Nothing in this section shall be construed as preventing a man, with his own consent, in addition to annual training, being called up for the purpose of duty or instruction in accordance with orders and regulations under this Part of this Act.

Laying of draft Orders in Council relating to training before Parliament.

16. Before any Order in Council is made under this Act providing for preliminary training or extending the period of annual training the draft thereof shall be laid before each House of Parliament for a period of not less than forty days during the Session of Parliament, and, if either of those Houses before the expiration of those forty days presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken, without prejudice to the making of a new draft Order.

Embodiment.

Embodiment of Territorial Force.

17.—(1) Immediately upon and by virtue of the issue of a proclamation ordering the Army Reserve to be called out on permanent service, it shall be lawful for His Majesty to order the Army Council from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for embodying all or any part of the Territorial Force, and in particular to make such special arrangements as they think proper with regard to units or individuals whose services may be required in other than a military capacity:

A.D. 1907. Part II. ss. 17-19.

Provided that, where under any such proclamation directions have been issued for calling out all the men belonging to the first class of the Army Reserve, the Army Council shall, within one month after such directions have been issued, issue directions for embodying all the men belonging to the Territorial Force, unless an address has been presented to His Majesty by both Houses of Parliament praying that such directions as last aforesaid be not issued, and such directions shall not, unless the emergency so requires, be given until Parliament has had an opportunity of presenting such an address.

(2) Whenever, in consequence of the calling out of the whole of the first class of the Army Reserve, directions are required under this section to be given for embodying the Territorial Force, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

(3) Every order and all directions given under this section shall be obeyed as if enacted in this Act, and, where such directions for the time being direct the embodiment of any part of the Territorial Force, every officer and man belonging to that part shall attend at the place and time fixed by those directions, and after that time shall be deemed to be embodied, and such officers and men are in this Act referred to as embodied or as the embodied part or parts of the Territorial Force.

Disembodying of Territorial Force.

18.—(1) It shall be lawful for His Majesty by proclamation to order that the Territorial Force be disembodied, and thereupon the Army Council shall give such directions as may seem necessary or proper for carrying the said proclamation into effect.

(2) Until any such proclamation of His Majesty has been issued the Army Council may from time to time, as they may think expedient for the public service, give such directions as may seem necessary or proper for disembodying any embodied part of the Territorial Force, and for embodying any part of the Territorial Force not embodied, whether previously disembodied or otherwise.

(3) After the date fixed by the directions for the disembodiment of any part of the Territorial Force, the officers and men belonging to that part shall be in the position of officers and men of the Territorial Force not embodied.

Notices.

Service and publication of notices.

19. Notices required in pursuance of this Part of this Act or of the orders and regulations in force thereunder to be given to men of the Territorial Force shall be served or published in such manner as may be prescribed, and, if so served or published, shall be deemed to be sufficient notice, and every constable and overseer shall, when so required by or on behalf of the Army Council, conform with the orders and regulations for the time being in force under this Part of this Act with respect to the publication and service of notices, and in default shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

Offences.

Punishment for failure to attend on embodiment.

20.—(1) Any man of the Territorial Force who without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembling on embodiment, shall be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act, and shall, whether otherwise subject to military law or not, be liable to be tried by court-martial, and convicted and punished accordingly, and may be taken into military custody.

(2) Sections one hundred and fifty-three and one hundred and fifty-four of the Army Act shall apply with respect to deserters and desertion within the meaning of this section in like manner as they apply with respect to deserters and desertion within the meaning of those sections, and any person who, knowing any man of the Territorial Force to be a deserter within the meaning of this section or of the Army Act, employs or continues to employ him, shall be deemed to aid him in concealing himself within the meaning of the first-mentioned section.

(3) Where a man of the Territorial Force commits the offence of desertion under this section the time which elapsed between the time of his committing the offence and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of discharge.

Punishment for failure to fulfil training conditions.

21. Any man of the Territorial Force who without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for preliminary training, or for annual training, or fails to attend the number of drills and fulfil the other conditions relating to preliminary or annual training prescribed for his arm or branch of the service, shall be liable to forfeit to His Majesty a sum of money not exceeding five pounds recoverable on complaint to a court of summary jurisdiction by the prescribed officer, and any sums recovered by such officer shall be accounted for by him in the prescribed manner.

Wrongful sale, &c., of public property.

22. If any person designedly makes away with, sells, or pawns, or wrongfully destroys or damages, or negligently loses anything issued to him as an officer or man of the Territorial Force, or wrongfully refuses or neglects to deliver up on demand anything issued to him as an officer or man of the Territorial Force, the value thereof shall be recoverable from him on complaint to a court of summary jurisdiction by the county association ; and he shall also, for any such offence of designedly making away with, selling or pawning, or wrongfully destroying as aforesaid, be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

Civil Rights and Exemptions.

Civil rights and exemptions.

23.—(1) The acceptance of a commission as an officer of the Territorial Force shall not vacate the seat of any member returned to serve in Parliament.

(2) An officer or man of the Territorial Force shall not be liable

A.D. 1907. Part II. ss. 23-24.

to any penalty or punishment for or on account of his absence during the time he is voting at any election of a member to serve in Parliament, or during the time he is going to or returning from such voting.

(3) If a sheriff is an officer of the Territorial Force, then during embodiment he shall be discharged from personally performing the office of sheriff, and the under sheriff shall be answerable for the execution of the said office in the name of the high sheriff; and the security given by the under sheriff and his pledges to the high sheriff shall stand as a security to the King and to all persons whomsoever for the due performance of the office of sheriff during such time.

(4) An officer or man of the Territorial Force shall not be compelled to serve as a peace officer or parish officer, and shall be exempt from serving on any jury, and a field officer of the Territorial Army shall not be required to serve in the office of high sheriff.

Legal Proceedings.

Trial of offences and application of penalties.

24.—(1) Any offence under this Part of this Act, and any offence under the Army Act if committed by a man of the Territorial Force when not embodied, which is cognizable by a court-martial shall also be cognizable by a court of summary jurisdiction, and on conviction by such a court shall be punishable with imprisonment for a term not exceeding three months or with a fine not exceeding twenty pounds, or with both such imprisonment and fine, but nothing in this provision shall affect the liability of a person charged with any such offence to be taken into military custody.

(2) Any offence which under this Part of this Act is punishable on conviction by court-martial, shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, with this modification, that any reference in that Act to forfeiture and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(3) Any offence which under this Part of this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be recovered, in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act, in like manner as if those sections were herein re-enacted and in terms made applicable to this Part of this Act, subject to the following modification (namely)—

Every fine imposed under this Part of this Act on a man of the be paid to the association of the county for which the man was in any Act or charter or in the said sections to the contrary, under this Part of this Act, shall, notwithstanding anything Territorial Force, or recovered on a prosecution instituted enlisted.

(4) Where a man of the Territorial Force is subject to military law and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act may be assembled after the expiration of twenty-one days from the date of such absence, not-

withstanding that the period during which he was subject to military law is less than twenty-one days or has expired before the expiration of twenty-one days.

Supplemental provisions as to trial of offences.

25.—(1) A person charged with an offence which under this Part of this Act is cognizable both by a court-martial and by a court of summary jurisdiction shall not be liable to be tried both by a court-martial and by a court of summary jurisdiction, but may be tried by either of them, as may be prescribed:

Provided that a man who has been dealt with summarily by his commanding officer shall be deemed to have been tried by court-martial.

(2) Proceedings against an offender before either a court-martial or his commanding officer, or a court of summary jurisdiction, in respect of an offence punishable under this Part of this Act, and alleged to have been committed by him when a man of the Territorial Force, may be instituted whether the term of his service in the Territorial Force has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to his commanding officer if the alleged offender is then apprehended, or, if he is not then apprehended, then within two months after the time at which he is apprehended.

(3) Where an offender has on several occasions been guilty of desertion, fraudulent enlistment, or making a false answer, he may for the purposes of any proceedings against him be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs, and it shall be lawful to charge the offender with any number of the above-mentioned offences at the same time, whether they are offences within the meaning of the Army Act or offences within the meaning of this Part of this Act, and to give evidence of such offences against him, and, if he has been convicted of more than one offence, to punish him accordingly as if he had been previously convicted of any such offence.

Evidence.

26.—(1) Section one hundred and sixty-four of the Army Act (which relates to evidence of the civil conviction or acquittal of a person subject to military law) shall apply to a man of the Territorial Force who is tried by a civil court, whether he is or is not at the time of such trial subject to military law.

(2) Section one hundred and sixty-three of the Army Act (relating to evidence) shall apply to all proceedings under this Part of this Act.

Miscellaneous.

Exercise of powers vested in holder of military office.

27.—(1) Any power or jurisdiction given to, and act or thing to be done by, to, or before any person holding any military office may, in relation to the Territorial Force, be exercised by or done by, to, or before any other person for the time being authorised in that behalf, according to the custom of the Service.

(2) Where by this Part of this Act, or by any order or regulation in force under this Part of this Act, any order is authorised to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such military authority, and

A.D. 1907.
Part II.

an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised.

ss. 27-29. Application of enactments.

28.—(1) The Army Act shall apply to the Territorial Force and officers and men thereof in like manner as it applies to the Militia, and officers and men of the Militia, except that men of the Territorial Force shall, in addition, be subject to military law when called out on actual military service for purposes of defence, and shall be liable to dismissal as a punishment, and for that purpose the amendments contained in the First Schedule to this Act shall be made in the Army Act.

(2) For the purpose of section one hundred and forty-three of the Army Act and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the Territorial Force, when going to or returning from any place at which they are required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of the regular forces on duty.

(3) His Majesty may by Order in Council apply, with the necessary adaptations, to the Territorial Force or the officers or men belonging to that force any enactment relating to the Militia, Yeomanry, or Volunteers, or officers or men of the Militia, Yeomanry, or Volunteers, other than enactments with respect to the raising, service, pay, discipline, or government of the Militia, Yeomanry, or Volunteers, and every such Order in Council shall be laid before both Houses of Parliament.

Transitory.

Transitory provisions.

29.—(1) Where an association has been established under this Act for any county His Majesty may by Order in Council transfer to the Territorial Force such units of the Yeomanry and Volunteers or part thereof raised in the county as may be specified in the Order, and every such unit or part thereof shall from the date mentioned in the Order be deemed to have been lawfully formed under this Part of this Act as an unit of the Territorial Force as provided by the Order, and the provisions of this Part of this Act shall apply to it accordingly.

(2) Every officer and man of an unit or part thereof mentioned in any such Order shall, from the date mentioned in that Order, be deemed to be an officer or man of the Territorial Force. Provided that nothing in this section or in any Order made thereunder shall, without his consent, affect the conditions or area of service of any person commissioned, enlisted, or enrolled before the passing of this Act.

(3) An Order in Council under this section may provide—

(*a*) For the application to officers and men who become subject thereto of the provisions of this Act as to conditions and area of service, and for the continuance of the application to officers and men who remain subject thereto of the provisions as to conditions and area of service previously in force as respects those officers and men:

(*b*) For transferring to the association any property vested

in a Secretary of State for the purposes of any unit to which the Order relates:

(*c*) For transferring to the association any property belonging to or held for the benefit of any such unit, so however that all property so transferred shall as from the date of the transfer be held by the association for the benefit in like manner of the corresponding unit of the Territorial Force or for such other purposes as the association, with the consent of such corresponding unit, to be ascertained in the prescribed manner, shall direct; and any question which may arise as to whether any property is transferred to an association, or as to the trusts or purposes upon or for which it is or ought to be held, shall be referred for the decision of a Secretary of State whose decision shall be final. The corresponding unit of the Territorial Force shall, in the event of any such transfer, become entitled, notwithstanding the terms of any trust, limitation, or condition affecting the property so transferred, to the estate or interest in such property of the unit to the property of which the order relates; but, subject to this provision, the interest of any beneficiary other than such unit shall not, without the consent of such beneficiary, be affected. The order may, if it be deemed proper, having regard to the special circumstances of any case, provide for the appointment of special trustees to act together with or to the exclusion of the association in regard to any such property and such special trustees may be the existing trustees of such property:

(*d*) For transferring to the association any liabilities of any such unit which the association is willing to assume, and providing for the discharge of any such liabilities which are not so transferred:

(*e*) For transferring to the association any land or interest in land acquired by the council of a county or borough on behalf of any volunteer corps to which the order relates, and any outstanding liabilities of the council incurred in respect thereof, if the council and the association consent:

and may contain such supplemental, consequential, and incidental provisions as may appear necessary or proper for the purposes of the Order.

(4) Every Order in Council made under this section shall be laid before both Houses of Parliament.

Part III.—RESERVE FORCES.

Enlistment and terms of service of special reservists. 45 & 46 Vict. c. 48.

30.—(1) The power of enlisting men into the first class of the army reserve under the Reserve Forces Act, 1882, shall extend to the enlistment of men who have not served in His Majesty's regular forces, and men so enlisted who have not served in the regular forces are in this Part of this Act referred to as special reservists, and a special reservist may be re-engaged, and when

A.D. 1907. Part III. ss. 30-32.

re-engaged shall continue subject to the terms of service applicable to special reservists.

(2) A special reservist may in addition to being called out for annual training, be called out for a special course or special courses of training at such place or places within the United Kingdom at such time or times and for such period or periods, not exceeding in the whole six months, as may be prescribed, in like manner and subject to the like conditions as he may be called out for annual training, and may during any such course be attached to or trained with any body of His Majesty's forces.

(3) Notwithstanding the provisions of section eleven of the Reserve Forces Act, 1882, any special reservists may be called out for annual training for such period or periods as may be prescribed by any order or regulations under the Reserve Forces Act, 1882.

(4) Provided that where one of the conditions on which a man was enlisted or re-engaged is that he shall not be called out for training, whether special or annual, for a longer period than the period specified in his attestation paper, he shall not be liable under this section to be called out for any longer period.

(5) Where a proclamation ordering the army reserve to be called out on permanent service has been issued, it shall be lawful for His Majesty at any time thereafter by proclamation to order that all special reservists shall cease to be so called out, and thereupon a Secretary of State shall give such directions as may seem necessary or proper for carrying the said proclamation into effect.

(6) A special reservist who enlists into the regular forces shall upon such enlistment be deemed to be discharged from the army reserve.

Agreements as to extension of service.

31. A Secretary of State may, by regulations under the Reserve Forces Act, 1882, authorise any special reservist having the qualifications prescribed by those regulations to agree in writing that if the time when he would otherwise be entitled to be discharged occurs whilst he is called out on permanent service, he will continue to serve until the expiration of a period, whether definite or indefinite, specified in the agreement, and, if any man who enters into such an agreement is so called out, he shall be liable to be detained in service for the period specified in his agreement in the same manner in all respects as if his term of service were still unexpired.

Liability of reservists to be called out.

32.—(1) A special reservist shall, if he so agrees in writing, be liable during the whole of his service in the army reserve, or during such part of that service as he so agrees, to be called out on permanent service without such proclamation or communication to Parliament as is mentioned in section twelve of the Reserve Forces Act, 1882, and the calling out of men under this section shall not involve the meeting of Parliament as required by section thirteen of that Act:

Provided that—

(*a*) The number of men so liable shall not at any one time exceed four thousand:

(*b*) The power of calling out of men under this section shall not be exercised except when they are required for service outside the United Kingdom when warlike operations are in preparation or in progress:

(*c*) Any agreement under this section may provide for the revocation thereof by such notice in writing as may be therein stated:

(*d*) Any exercise of the power of calling out men under this section shall be reported to Parliament as soon as may be:

(*e*) The number of men for the time being called out under this section shall not be reckoned in the number of the forces authorised by the Annual Army Act for the time being in force.

(2) Six thousand shall be substituted for five thousand as the maximum number of men liable to be called out under section one of the Reserve Forces and Militia Act, 1898, and the liability to be called out under that section may, if so agreed, extend to the first two years of a man's service in the first class of the army reserve.

61 & 62 Vict. c. 9.

(3) In paragraph (5) of section one hundred and seventy-six of the Army Act the words "under His Majesty's proclamation" shall be repealed.

Power to form battalions, &c., of reservists.

33. Orders and regulations under the Reserve Forces Act, 1882, may provide for the formation of special reservists into regiments, battalions, or other military bodies, and for the formation of such regiments, battalions, or other military bodies into corps, either alone or jointly with any other part of His Majesty's forces, and for appointing, transferring, or attaching special reservists to such corps, and for posting, attaching, or otherwise dealing with special reservists within such corps.

Transfer of Militia battalions to reserve.

34.—(1) His Majesty may by Order in Council transfer to the Army Reserve such battalions of the Militia as may be specified in the order, and every battalion so transferred shall from the date mentioned in the order be deemed to have been lawfully formed under this Part of this Act as a battalion of special reservists.

(2) As from the said date every officer of any battalion so transferred shall be deemed to be an officer in the reserve of officers, and every man in such battalion shall be deemed to be a special reservist, and the order may contain such provisions as may seem necessary for applying the provisions of the Reserve Forces Acts, 1882 to 1906, as amended by this Act, to those officers and men:

Provided that, unless any officer or man in any battalion so transferred indicates his assent to such transfer certified by his commanding officer, nothing in the order shall affect his existing conditions of service.

(3) All Orders in Council made under this section shall be laid before both Houses of Parliament.

Amendment of 45 & 46 Vict. c. 48, s. 6 (4).

35. Subsection (4) of section six of the Reserve Forces Act, 1882, which makes a certificate purporting to be signed by an officer appointed to pay men belonging to the army reserve evidence in certain cases, shall, where a person other than an officer is appointed to pay men belonging to the army reserve, apply to certificates purporting to be signed by such person.

Commissions in reserve of officers not to vacate seat in Parliament.

36. The acceptance of a commission as an officer in the reserve of officers shall not vacate the seat of any member returned to serve in Parliament.

PART IV.—SUPPLEMENTAL.

Provisions as to orders, schemes, and regulations.

37.—(1) Every Order in Council or scheme required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or, if not, within forty days after the commencement of the then next ensuing session; and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days, praying that any such order or scheme may be annulled, His Majesty may thereupon by Order in Council annul the same, and the order or scheme so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

(2) All Orders in Council, orders, schemes, and regulations made under this Act may be varied or revoked by subsequent Orders in Council, orders, schemes, and regulations made in the like manner and subject to the like conditions.

Definitions.

38. In this Act, unless the context otherwise requires—

The expression "county" means a county or riding of a county for which a lieutenant is appointed, and includes the City of London; and each county of a city or county of a town mentioned in the first column of the Second Schedule to this Act shall be deemed to form part of the county set opposite thereto in the second column of that schedule;

The expression "man of the Territorial Force" includes a non-commissioned officer;

The expression "prescribed" means prescribed by orders or regulations;

Other expressions have the same meaning as in the Army Act.

Special provisions as to special places.

39.—(1) The Lord Warden of the Cinque Ports may ex-officio be a member of the association of the county of Kent or of the county of Sussex, or of both, as may be provided by schemes under this Act.

(2) The Warden of the Stannaries may ex-officio be a member of the association of the county of Cornwall or of the county of Devon, or of both, as may be provided by schemes under this Act.

(3) The Lord Mayor of the City of London shall ex-officio be president of the association of the City of London.

(4) The Governor or Deputy Governor of the Isle of Wight shall ex-officio be a member of the association of the county of Southampton.

(5) Nothing in this Act shall affect the raising and levying of the Trophy Tax as heretofore in the City of London, but the proceeds of the Tax so levied may be applied by His Majesty's Commissioners of Lieutenancy for the City of London, if the Royal London Militia Battalion is re-constituted as a battalion of the Army Reserve, for any purposes connected with that battalion, and may also, if His Majesty's Commissioners of Lieutenancy for the City of London in their discretion see fit, be applied for the purposes of any of the powers and duties of the association of the City of London under this Act.

40.—(1) In the application of this Act to Scotland the following modifications shall be made:— Application to Scotland and the Isle of Man.

(*a*) This Act shall apply to a county of a city in like manner as to any other county: Provided that on the representation or with the consent of the corporation of any county of a city it shall be lawful for His Majesty, by order signified under the hand of a Secretary of State, at any time after the passing of this Act, to declare that such county of a city shall for the purposes of this Act be deemed to form part of the county set opposite thereto in the second column of the Third Schedule to this Act, and to provide for all matters which may appear necessary or proper for giving full effect to the order;

(*b*) The expression "county borough council" means the town council of a royal, parliamentary, or police burgh with a population of or exceeding twenty thousand according to the census for the time being last taken;

(*c*) The expression "land" includes heritages;

(*d*) The expression "overseer" means an inspector of poor.

(2) This Act shall apply to the Isle of Man as if it formed part of, and were included in the expression, the United Kingdom subject to the following modifications:—

(*a*) The Isle of Man shall be deemed to be a separate county;

(*b*) References to the Governor of the Island shall be substituted for references to the lieutenant of a county;

(*c*) References to a High Bailiff or two justices of the peace and to conviction by such a Bailiff or justices shall be substituted for references to a court of summary jurisdiction and to conviction under the Summary Jurisdiction Acts;

(*d*) References to the Tynwald Court shall be substituted for references to Parliament in the section of this Act relating to civil rights and exemptions.

41. This Act may be cited as the Territorial and Reserve Forces Act, 1907, and so far as it relates to the reserve forces may be cited with the Reserve Forces Acts, 1882 to 1906, as the Reserve Forces Acts, 1882 to 1907. Short title.

SCHEDULES.

Section 28

FIRST SCHEDULE.

Amendment of Army Act.

Section.	Amendment.
S. 13 (1) (*a*) and (*b*) ...	After the word "Militia" there shall be inserted the words "or Territorial Force."
S. 115 (7)	After the word "Whenever" there shall be inserted the words "a proclamation ordering the Army Reserve to be called out on permanent service or"
S. 115 (8)	After the words "then if" there shall be inserted the words "a proclamation ordering the Army Reserve to be called out on permanent service or"
S. 175	After paragraph (3) there shall be inserted the following paragraph :— "(3A) Officers of the Territorial Force other than members of the permanent staff."
S 176	After paragraph (6) there shall be inserted the following paragraph :— "(6A) All non-commissioned officers and men belonging to the Territorial Force— "(*a*) When they are being trained or exercised, either alone or with any portion of the regular forces or otherwise ; and "(*b*) When attached to or otherwise acting as part of or with any regular forces ; and "(*c*) When embodied ; and "(*d*) When called out for actual military service for purposes of defence in pursuance of any agreement."
S. 181 (4)	The words "the unit of the Territorial Force," shall be inserted after the words "officer commanding," where those words first occur, and the words "an unit of the Territorial Force," shall be inserted after those words where they secondly occur, and the words "Territorial Force," shall be inserted after the words "an officer, non-commissioned officer, or man of the".
S. 181 (4) (*a*)	After the word "any" there shall be inserted the words "man of the Territorial Force or".
S. 181 (4) (*b*) and (*c*) ...	The word "Militia" shall be repealed in both places where that word occurs, and the words "of the Territorial Force or Militia" shall be inserted after the word "man" in both places where that word occurs.
S. 181 (6)	After the word "Volunteers" there shall be inserted the words "or the Territorial Force."
S. 190 (12)	After the word "means" there shall be inserted the words "the Territorial Force."

SECOND SCHEDULE.

A.D. 1907.

Section 38.

Names of Cities and Towns.	County.
England.	
County of the city of Chester	Chester.
County of the city of Exeter	Devon.
County of the town of Poole	Dorset.
County of the city of Gloucester	Gloucester.
County of the city of Bristol	Gloucester.
County of the city of Canterbury	Kent.
County of the city of Lincoln	Lincoln.
County of the city of Norwich	Norfolk.
County of the town of Newcastle-upon-Tyne	Northumberland.
Borough and town of Berwick-upon-Tweed	Northumberland.
County of the town of Nottingham	Nottingham.
County of the town of Southampton	Southampton.
County of the city of Lichfield	Stafford.
County of the city of Worcester	Worcester.
County of the city of York	West Riding of York.
County of the town of Kingston-upon-Hull	East Riding of York.
County of the town of Carmarthen	Carmarthen.
County of the town of Haverfordwest	Pembroke.
Ireland.	
County of the city of Waterford	Waterford.
County of the town of Londonderry	Londonderry.

THIRD SCHEDULE.

Section 40.

Scotland.

Name of County of City.	County.
County of the city of Edinburgh	Edinburgh.
County of the city of Glasgow	Lanark.
County of the city of Dundee	Forfar.
County of the city of Aberdeen	Aberdeen.

INDEX.

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

A.

Abandonment of post **267–8, 270–1**, *534*
Abduction.. .. .. 96, 109
Abortion 97, 109
Abroad.
Civilian witness **378**
Offences committed 12, 40, 143, **315–6**
Service (*q.v.*).
Trial, removal of accused for, from 40
Absence without leave.
Absentee, form of order for removal in military custody .. *597*
Conviction for, on charge of desertion, and *vice versâ* 19, 23, **279**, **282**, **324**
Court of inquiry, period to elapse before assembly **341**
„ „ procedure and regulations.. 19 (*b*), **341**, *522–3*
Dates to be stated in particulars of charge *531*
„ wrongly stated in charge, new trial where *459*, *482*
"Day," what constitutes a **387–90**
Descriptive return form.. .. .. **446**
Distinction between desertion and 18, **280**, **283**
Forms of charges *536*, *548–9*
Militia 204, *557*, 639, 640, 642
Offence of, what is, under Army Act.. .. .. .. **282–3**
Pay, forfeiture of 32, **385–9**
Period of, reckoning **283**
Punishment by commanding officer 32, **309–311**, **386–7**
„ „ court-martial **282–3**, **341**, **389**, **390**
Regimental Debts Act, modification in case of 675, 682
„ orders, notification in .. .. 32 (*g*)
Reserve forces 625–7
Accessory after the fact 90, 110
„ **before the fact** 90, 109
Accidents, in relation to criminal responsibility 91
Accomplice, evidence of.. .. .. .. 67, 68 (*b*), 74, 76, 78
Accounts, audit, &c., of military 159, 162
Accusation, False. (*See* **False Accusation.**)
Accused.
Account of offence 28, **287**, **307**, *538*
Acquittal of (*q.v.*).
Address by 45, *474*, *479*, *480*, *494*, *507*, *568*, *572*
Arraignment of. (*See* **Arraignment.**)
Arrest (*q.v.*).
Character (*q.v.*).
Charge (*q.v.*).
„ to be explained to *459*, *461*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Accused—*contd.*
Commanding officer of, cannot be member of court .. 37, **317**, *465*
Confinement of 27, **287-8**, *453*
Conviction, previous 78, *504*
Counsel for 42, 46, *507-8*
Court-martial, district, right to claim 29, 30-33, **310**, **311**, **312**, *454-7*
,, members, objection to .. 42, 43, **317-8**, *468-9*, *500*, *517*
,, ,, right to list of 40, *461*
,, shorthand writers, interpreters, &c., objection to 43, *500-1*
Cross-examination of 78, *462*, *484*, *485*, *494*, *503-4*
,, ,, witnesses by 29, 30, 45, *453*, *454*, *477*, *483*, *485*, *492*, *502*, *506*, *518*
Custody of, at court-martial 42
,, duty of commander of guard to receive and keep in 28
,, until charge disposed of 31
Death of, procedure *499*
Defence—latitude allowed 45, 46, *457*, *479*, *493-4*
,, opportunity for preparing .. 41, *460-1*, *479*, *498*, *515*
,, procedure 45, *478*, *494*
,, technicalities not to prejudice *490-1*
Defended by counsel, statement by 46, *480*, *509*, *510*
Escort at trial of 42, *504*
Evidence (*q.v.*).
False accusations by 50, **291**, *494*, *539*, *553*
Finding and sentence to be communicated to .. **320-1**, *488*, *518*
Friend of, at court-martial .. 41, 42, 46, 79, 80, *460*, *507*, *515*
Identification of.. .. .. *483*, *485*
Illness of, procedure **320**, *498*, *499*
Improper conduct at trial 46, *493*, *494*
Innocent until proved guilty 46, 58, *480*
Insanity at time of commission of offence 72, 88, **380**, *491*
,, trial **379**, *472*, *487*, *488*, *491*
Irons when to be used 27
Joint trial. (*See* **Trial**.)
Jointly charged, evidence of accomplice 76
Judge-Advocate-General, right to consult *461*, *514*
Mistake in description of 44, *460*, *473*
Notice of charge to be given to 31, 40, *461*, *515*
Nullity of trial 36, **400**, *491*
Plea, validity of 44
Prejudice to, by omission to furnish list of court *461*
,, trial of *515*
Presence at preliminary proceedings not essential 41
,, during investigation by C.O. 29, 30, *453*, *454*
,, ,, trial 42, *492*
President's, Judge-Advocate's, and Prosecutor's duty to 44, *479*, *492*, *514*
Proof, burden of. (*See* **Evidence**.)
Questions, refusal to answer .. .. 83 (*a*), *504*
Recommendation to mercy to be communicated to 49, **320**, **321**, *488*, *518*
Record of, evidence as to, in regimental books, &c. .. *483*, *485*, *506*
Release if evidence does not justify a trial .. 28, 40, **309**, *454-5*, *462*
Remand, for trial by court-martial 31, *456*
Removal for trial 40
Seat for, at trial 42
Several, procedure at trial of 43, *462*, *500*, *517*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Accused—*contd.*
Statement by, not on oath—
before commanding officer in defence .. 29, 30, *453*, *454*, *455–6*
before court-martial—
cannot also give evidence *509*, *510*
influence on decision of court *480*
no cross-examination on 46, *510*
right to make 46, *509*
Summarily dealt with by C.O., desire to be .. 30, **310**, **311**, *457*
Summing up own case on second address 45
Trial (*q.v.*).
Violence of, during trial *504*
Wife. (*See* **Wife** and **Witness.**)
Witness (*q.v.*).
Acquittal.
Civil court, by, certificate of proceedings **406**
„ „ or court-martial, bars retrial by C.-M. or C.O. for same offence .. 33, 35, 44, **309**, **311**, **400**, **403**, **404**, *475*
Confirmation of, not required **322**, **323**, *481*, *518*
Confirming officer's duty in certain cases **323**
Court-martial, by, does not bar retrial by civil court **403**, **404**
Discharge on **322**, *518*
Finding of, is final 51, **323**
Forms for *573*
Honourable, finding of 48, *481*
Procedure on *483*
Pronounced in open court **322**, *483*, *488*
Revision of, not allowed **322**, **323**
Votes, if equal on finding **320**, **321**, *500*, *518*
Where charge not proved 46, *481–2*, *511*
Acting rank. (*See* **Rank.**)
Actions.
Abroad, cause arising 132
Against soldiers **392–3**
Aliens, by 141
Damages for wrongful punishment, &c., for .. 120, 128–141, **410**
„ where brought, for 144, **410**
Libel, for 137–140
Negligence, for 140
Protection of officers and courts against .. 144, **409**, **410**, 646
Active List, meaning of **414**
Active Service.
Abroad, arrest on 25, 33, **342**
Courts-martial, field general, rules as to 39, **315–6**, **321**, *516–520*
„ finding and sentence, confirmation of, on .. 52
„ may award field punishment on .. 24, **303–6**
Declarations by Governors, &c., as to **435–6**
Definition **435–6**
Drunkenness on 23, **309**
Offences, civil, cognisable by military courts 3, 85, 225, **272**, **299**, **300**, **315–6**
„ field punishment for .. 24, 32, **303**, **306**, **309**, **311**, *518*
„ increased punishment for .. 6, 23, **270–1**, **274–7**, *543*
„ on .. 23, 24, 32, 53, 85, 171, **267–274**, **276**, **278**, **300**, **303**, **306**, **309**, **311**, **322**, **324**, **387**, **389**, **432**, *534*, *536*, *544*, *546*, *547*
Pay, forfeiture of .. 32, **303**, **306**, **309**, **311**, **387**, **389**
Troops on board ship *en route* for war, considered to be on .. **436**
Volunteers (*q.v.*).

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Adjournment. (*See* **Courts-Martial.**)
Adjutant, charges usually framed by *458*
Adjutant-General.
Competent military authority under Army Act .. **338**, **342**, **361**
Orders, warrants, &c., signifying and validity of **410–1**
When committing, discharging, or removing authority **328**, **330**, **335–6**
„ remitting, &c., authority *523*
Administration.
Letters of 209, 676
(*See* **Regimental Debts.**)
Admiralty.
Definition **426**
Military prison cannot be established by **426**
Power to issue warrants **422**, **423**, **424**, **426**
„ make articles of war for Royal Marines **422**
Powers in respect of courts-martial **422–7**
Regulations included in term "King's Regulations" .. **424**
Royal Marines, powers under Army Act 200, **422–7**
Admissions and Confessions.. 73–5
Adultery, agreement to procure 96, 109
Agriculture and Fisheries, Board of, documents issued by, used as evidence .. .. 65 (*b*)
Alarm, creating **269**, **270**, **271**, **273**, *534*, *535*, *545*
Alderman of Borough, officer disqualified as 210, **395**
Alibi.
Questions, fair and unfair 82
Time and place to be stated in particulars of charge .. *532*
Aliens.
Actions by 141
Enlistment of 188, 189, 190, **358**
Allegiance, oath of. (*See* **Oath.**)
Allowances.
Assignment of, prohibited **390**
Personation in relation to **391**
Warrant officer, suspension from, no longer possible .. **431**
Amends, Tender of, as plea in action against officer.. 144, **409**, 646
Ammunition, equipments, &c., loss, &c. (*See* **Equipments.**)
Applications or reports to be in writing *528*
Appointment to Corps, meaning of "appointment" .. **348**
Apprentices.
Claims of masters 189, **358–9**, **393**, **443**
Enlisting in Militia 635
Kit, disposal of 683
Regimental Debts provisions, application in case of 675, 682–3, 684
Armour Acts repealed 151
Armourer-Serjeants **351**
Arms.
Casting away in face of enemy.. .. .. .. **268**, *534*, *543*
Equipments, &c. (*q.v.*).
Army.
Administration and government, history of 6, 158–163
Constitution of the British 193–207
Crown's powers over .. .. 12–14, 137 (*a*), 159
Departmental corps and departments.. 194
Finance, history of 159
Militia, enlisting in, competition with, &c. .. 156, 164, 172, 200–1, 203, 204, **280–1**, 636
Numbers of, provisions as to 156, **257**, 653

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Army—*contd.*
Parliamentary control over, by Army (Annual) Act 1, 14, 155, 158–9, **257**
Raising, government and payment of.. 156–162
Reserve. (*See* **Reserve Forces.**)
Retention in army service of men about to enter Reserve **353–4**, 624
Standing, history of 154–162
„ illegal in peace without consent of Parliament .. 155, **257**
„ maintenance of .. .. .. 10, 11 (*a*), 154, 155
Volunteers enlisting in 655
Army Accounts, audit of 159, 162
Army Act.
Administered according to rules of English civil courts 1, **378–9**, *501*
Amendments, date of operation of .. .. **267** (*a*)
Application of military law, definitions, &c.. .. .. **413–442**
„ to persons subject to military law **258**
Arrest and trial 25–34, **306–325**
Billeting and impressment of carriages **362–374**
Brought into force by Army (Annual) Act .. 1, 14, 155, **258**, **267**
Crimes and punishments **267–306**
Dates of commencement in various parts of the Empire 14 (*c*), **258**
„ expiration „ „ „ .. **257**
Discipline **267–343**
Division into Parts **267**
Enlistment 187, **344–361**
Execution of sentence **325–339**
General provisions (prisons, pay, &c.) **374–413**
Meaning of, in Rules of Procedure *528*
Miscellaneous, provisions as to discipline **339–343**
Modifications and special provisions with respect to—
Auxiliary forces **429**
Channel Islands **434–5**
Indian forces **427–9**
Ireland, prisoners and prisons in **434**
Isle of Man **434–5**
N.C.Os. **431–3**
Persons not belonging to H.M.'s forces **433–4**
Royal Marines 4, 200, **422–7**
Ships **435**
Warrant Officers **430–1**
Offences punishable under 15–24, **267–300**
Punishments, scale of **302–6**
Schedules.. .. .. **443–7**
Sentence, offender undergoing, still subject to .. **304–5**, **401**
Army (Annual) Act **257–8**
Army Act brought into force by .. 11 (*a*), 14, 155, **258**, **267**
Billeting, officers to pay for their food **258**
„ prices chargeable by victualling-house keepers .. **258**
Parliamentary control over Army by 1, 14, 155, 158–9, **257**
Preamble to .. .. 11 (*a*), 14 (*c*), 155, 156, **257**
Army Circulars, Orders, &c., admissible as evidence .. **405–6**
Army Council.
Creation and duties 161–2
Power to cancel, award, or reduce punishment .. 33 (*g*), **310**
Report to, where delay in convening C.-M. **308**
Army Discipline and Regulation Act, 1879, repealed and re-enacted by Army Act.. .. .. .. 1 (*a*), 7, 14
Army Enlistment Acts 158

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Army Extraordinaries 159
Army List, admissible as evidence of rank, &c. **405**
Army Medical Service 194
Army Orders **405, 406**
Army Reserve. (*See* **Reserve Forces.**)
Army Service Act, 1847 158
Army Service Corps 194
Arraignment.
Adjournment of Court before.. .. .. *464*
Charge, accused to be informed of, before *461, 472, 518*
Field general court, in case of.. .. .. *518*
Meaning of 43
Officer cannot be added to court after.. .. .. .. *499*
Separate arraignment in case of joint trial *472*
Time and method of 43, *472, 474, 494-5, 518*
Array, Commissions of 150, 151
Arrest.
Active service abroad, on 25, 33, **342**
Breaking 27, **288**, *538, 552*
Close, meaning of 25, 27
Improper, of witness, on civil process **377**, *503*
Inferior officer may order superior into 26, **277, 306**
Investigation should precede 25
Malicious.. .. .. 120(*b*)
Military custody (*q.v.*).
„ „ includes 25, **306**
N.C.O. (*q.v.*).
Officer (*q.v.*).
Open, meaning of 25, 27
Order for, generally written 25
Peers and M.Ps. not exempt from 26
Person in possession of military stores, &c. **398, 400**
Release from, order for.. 26
Report of.. .. .. 25, **307-8**
Rules as to 25, **306-9**, *453*
Unnecessary retention in .. .. .. 25(*d*), **287, 307-8**, *538*
Verbal order for, when given 25
Wrongful, remedy for 26
Arson.
Definition and penalty 107, 110
Evidence of 61
Articles of War.
Admiralty's power to make, for royal marines **422**
Binding on army in peace, when abroad 12
Crown's present powers in respect of 24, **339**
History of .. .. 6–7, 12–14, 137(*a*)
Indian 192, **414, 418, 420, 427-8**
Superseded by Army Act .. .. 1(*a*), 7, 14
Assaults.
Aggravated, examples of 95
Indecent 95–6, 110
Meaning and list of 94, 110
With intent to rob 103
Assizes, former exclusion of soldiers from towns during .. 210(*h*)
Attach, meaning when applied to soldiers **349**
Attempts to commit Offences.
Civil offences, triable by C.-M... .. .. **300**
Definition .. .. 90, 95(*a*), 99, 100
Offence and penalty 23, 110, **298, 299**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Attestation on Enlistment.
Consuls, before .. .. 191(*f*), **358**
Errors in, discharge owing to .. .. .. 187 (*e*), 189, **360-1**
Failure to appear before justice for .. .. .. 187(*f*), 188
False answers on—
Apprentices and indentured labourers enlisting, ... 189, **359**
Forms of Charge *541, 554*
Limit of time for proceeding before civil court **360**
Militia, Volunteers, Yeomanry 204, **281**, 640
Punishment 191, 204, **296, 346, 360**
Reserve Forces 626
False statement as to marriage **395**
Fee to justice's clerk for **347**
Militia (*q.v.*).
Necessary part of enlistment .. .. 187(*f*), 188
Paper—
Copy of, evidence of enlistment 188, **404**
Duplicate 188, **295, 296, 347**
Errors in, amendment of 188, **347**
Evidence of answers to questions 188, **404**
Production at trial of certain offences, necessary .. **295, 296**
Proof of enlistment, duplicate or copy 188, **281, 404**
Persons specially authorized to attest.. .. .. 191 (*f*), **357-8**
Procedure on 186–8, **346-7, 357-8**
Audit, Board of 159
Audit of Military Accounts 159, 162
Australia, Commonwealth of, colony for purposes of Army Act **442**
Auxiliary Forces.
Army Act, modification with respect to **429**
Billeting .. .. 180 (*b*), **362, 363, 429, 430**
Channel Islands **434**
Command over, regulated by H.M. **340-1**
Constitution of 200–7
Corps, definition of term **438**
Court-martial, composition of, on member of .. 37, **422,** *466*
Definition of **438**
Enlistment in **429**
Impressment of Carriages .. .. 182 (*a*), **429**
Lord Lieutenants, jurisdiction of, as to, re-vested in Crown.. 617, 654
Military law, application of, to.. .. **416-7, 419, 422, 429, 430**
Militia (*q.v.*)
Municipal officer.. .. .. **430**
Permanent staff, military law applied to **417, 419, 429**
Regular forces, enlistment in, stoppage from pay for compensation due to Auxiliary Forces .. **386-7**
„ included in term **422, 434**
„ relation to, of 193, 200, **422**
Sheriff **430**
Ship, embarked on board, subject to Naval Discipline Act **434**
Term, discontinued in official documents .. .. .. 200 (*g*)
Volunteers (*q.v.*).
Yeomanry (*q.v.*).

B.

Bailee, theft by .. .. 101 (*a*)
Banker's Book, entry in as evidence .. .. 70 (*d*)
Barracks.
Breaking out of **277,** *536, 547*
Building of 159, 171, 179

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Bastard. (*See* **Children.**)
Battalion, definition **439**
Beyond the Seas, definit'on of **439, 442**
Bigamy 108, 111
Billeting.
Accommodation (*see* Victualling Houses, *below*).
Acts prohibiting, suspended .. .. 178 (*b*), **362**
Auxiliary forces .. .. .. 180 (*b*), **362, 363, 429, 430**
Barracks, obviate necessity for 179
Billet masters **374**
Channel Islands excluded from provisions as to **434**
Derivation of name .. .. 177 (*b*)
Exemptions from liability to billet **363**
History of 177–180
Illegal, except as authorised by Army Act 178
Ill-treatment in relation to, compensation for **373**
Improper and unlawful 177, 179, **293–4**
Ireland 178, 179
Isle of Man excluded from provisions as to **434**
Justices, provisions as to 179, **365, 373, 444**
Militia, of 172, 180, **362, 363, 429**
Offences by constables **366**
„ „ officers and soldiers punishable on summary conviction **294, 366-7**
„ „ victualling-house keepers **366**
„ forms of charges for *540, 554*
„ in relation to **293-4, 366-7**, *540*
Payment for **364, 372**
Police, obligation to provide billets 178, **362, 373-4, 445**
„ performance of duties in absence of **373**
„ provisions, as to **362, 365, 366, 371, 373, 445**
Prices chargeable by victualling-house keepers 178, **258**
Private houses, in, forbidden 178, 179
Regulations as to **293-4, 362-7, 372-4, 444**
Right extends to officers, soldiers and horses.. .. .. **362-3**
Routes, orders substituted for, in case of auxiliary forces .. **429**
„ rules as to 179, 180, **362, 365**
Scotland, in 178, 179
"Victualling house," meaning of **363**
Victualling houses, keepers of, liability to provide billets, &c. **362-4, 444**
„ „ „ offences by **366**
„ „ „ recovery of money due to **372-3, 445**
„ „ where accommodation insufficient **364, 365, 445**
Volunteers .. .. .. 180 (*b*), **362, 363, 429, 430**
Yeomanry .. .. .. 180 (*b*), **362, 363, 429, 430**
Birth.
Concealment of 97–8, 111
Death at, causing 98
Boats, impressment of **370–1**
Bona fides, when no excuse for illegal act (and *see* **Malice**) .. 132
Bounty Certificate of yeoman or militiaman, taking as security **400**
Bounty on Enlistment.
Army 156, 157
Militia .. .. 172, 173, 204 (*a*)
Branch Detention Barracks. *See* **Detention.**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Breaking and entering house, meaning of.. 103–4
Brothel, keeping a 97, 113
Buildings, injury to 33, **386**, **388**
Burden of Proof. (*See* **Evidence.**)
Burglary.
Definition, offence and punishment 103–4, 111
Form of charge *556*

C.

Camp, breaking out of **277**, *536*
Camp Followers.
Arrest of **343**
Cannot be tried by Regimental C.-M. or C.O. .. **313**, **417**, **433**
Exaction practised towards, punishment for.. .. .. **288**, *538*
Form of charge for *533*
Military law, application of, to .. 6, **268**, **413**, **417**, **420**, *458*
Trial of civil offences committed by **272**, *545*
Canada, Dominion of, colony for purposes of A.A. **442**
Canteens.
Exemption from billeting **363**
Licences for, provisions as to **412**
Supervision of accounts to prevent embezzlement 21
Cards, cheating at 104, 111
Carnal Knowledge 95, 97, 111
Carriages. (*See* **Impressment of Carriages.**)
Cashiering.
Offences for which cashiering is maximum punishment
271, **274**, **276–8**, **282**, **286–8**, **291–2**, **294–5**, **297–8**
Officers punishable by **302**
Scandalous conduct of officer punishable only by 24, **283**
Sentence of, must precede sentence of penal servitude or imprisonment on officer **303**, **306**, *576*
Certificate.
Bounty, of yeoman or militiaman, taking as security .. **400**
Civil court, in case of conviction or acquittal **406**
Character on discharge 190, **357**
Discharge 190, 197, **357**
False statement in **290**
Identity, taking as security **400**
Life, taking as security.. .. .. **400**
Medical officer's, as to ability to undergo imprisonment, &c. *605*
Certiorari, Writ of, when issued 122–4
Ceylon-Mauritius R.A. Battalion .. .. 193 (*a*)
Challenge of Members of Court. (*See* **Courts-Martial**, Challenge.)
Channel Islands.
Army Act, application of, to **434–5**
Auxiliary forces **434**
Billeting provisions not extended to **434**
Colonies not deemed as being "beyond the seas" .. **439**, **442**, *529*
„ when deemed, for certain purposes
330, **334**, **381**, **434–5**, *527*, *529*
Impressment provisions not extended to **434**
Militia, service of, in .. .. 168, 636 (*a*), 652
Mutiny Act extended to .. .. 13 (*e*)
Penal servitude, imprisonment, and detention sentences in.. **434–5**
Regimental Debts Act, application of, to 676

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Channel Islands—*contd.*
Reserve Forces Act, application of, to 629
Rules of Procedure, application of, to *529*
Summary proceedings in **409**, **441**

Character.
Bad, verbal evidence of, not admissible *484*
Certificate of, on discharge 190, **357**
Civil courts no jurisdiction in cases affecting military .. 119
Cross-examination as to 78, 83, *462*, *484*, *485*, *494*, *504*
Evidence as to—
After conviction *483–4*
At trial 59, 60, 62, 78, *478–9*
False statement as to, on enlistment 191, **360**
Form for statement as to *574*
Good, evidence as to *484*
Witnesses as to .. .. 44, 45, 59 (*d*), 60, *477*, *478*, *479*, *484*, *506*

Charge.
Court-martial, proceedings before—
Accused, explanation to, of 44, *474*, *518*
„ may claim separate trial on each charge *495*, *496*
„ notice to, of 31, 40, *461*, *515*
„ objection by, to 44, *461*, *472*, *473*, *563*
„ pleading by, to 44–5, *472–8*, *518*
Alternative (*see also* **Offences**, Cognate) .. *476*, *481*, *482*, *489*
„ confirmation of special finding as to *489*
„ conviction on one only **283**, *481*
„ when to be framed **325**, *530*
Amendment of 44, *472*, *473*
Arraignment of accused on 43, *472*, *494–5*, *518*
Charge sheet—
Accused's right to copy of 40, *461*
All to be disposed of before sentence given *495*, *496*
Amendment of 44, *460*, *473*
Auxiliary Forces *458*, *459*, *532*, *533*
Commencement of, rules and form as to .. *458*, *529*, *532–3*
Court, laying before 31, 41, *472*
Form of *543*
Judge-Advocate-General, to be submitted to *463*
Memorandum as to signing, &c., of *583*
Person charged, description of *458*, *529*
President, to be submitted to 31, *463*, *464*, *472*
Prosecutor to have copy 31
Separate charges, when to be contained in *495–6*
„ object of *496*
„ order of trial in case of *494*, *496*
„ procedure in case of 43, *494–5*
Signing of *456*, *458*, *563*, *583*
Statement in, showing that accused subject to military law *458*, *459*, *529*
Validity of, presumptions in support of *460*
Contents of *458–460*, *531*
Convening officer responsible for correctness of 23, 31, 40, *458*, *462*
Damage, particulars of, to be stated in *532*
Dates, statement of, in particulars of *459*, *482*, *531*
Defect in *514*
Denial of, cases where onus rests on accused 58
Field general court, framing of, in case of *517*
Forms of, and note as to use .. .. .. 57 (*c*), *529–537*
Framing of *458–60*, *529–533*, *583*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Charge—*contd.*
Court-martial, proceedings before—*contd.*
Good and bad, examples of *459, 460, 536*
Illustrations of *543–557*
Improper, accused to be considered as not charged .. 120
Improperly framed, or not explicit, adjournment of court 42, *467–8*
Invalid, mitigation of sentence where one of several charges *488–9*
Joint trial of several accused on one *461, 517*
Meaning of term *458*
Offence, one only to be stated in each *458–9, 536*
Officers (*q.v.*).
One sentence in respect of all 49, *485–6, 494, 496*
Particulars, statement of, in.. .. .. .. *458-460, 531–2*
Place, statement of, in *531-2*
Plea of guilty to some and not guilty to others .. 45 (*b*), *476*
Promulgation of *488*
Relevant to, what is matter *493–4*
Report in relation to **287**
Responsibility for, where under wrong section of Army Act 23
Separate plea to each.. .. .. *472*
Several, abstract of evidence to correspond to each charge *458*
,, particulars of charge, rules as to *459, 531-2*
Sheet. *See* Charge sheet *above*.
Statement of offence in, rules as to . 57, *458–9, 517, 529–32, 583*
,, ,, value of articles to be stated in **286**
Substance of, must be proved 57, *477, 481-2*
Time, statement of, in *531 2*
Validity of, inquiry by court into 44, *467–8*
Investigation before trial—
Account in writing of 28, **287**, **307**, *538*
Accused must be present during investigation *453*
Adjournment of, for taking down summary of evidence .. 30, *454*
Commanding officer's duties and powers in relation to 25, 28–31, **307–312**, *453–8*
Delivery of 28
,, ,, delay in 28, **287–8**, **306**, *453–455*
Dismissal of 28, 29, **308**, **388**, *454, 455*
Evidence not taken in writing *454*
,, on oath when required 29, **309**, *454*
Hearing of *453–4*
Meaning of term **307**
Officer who investigated, disqualified as member of C.-M. 37, **317**, *465*
,, ,, ,, name of, to be stated in application for C.-M... .. .. *583, 604*
Officers qualified to investigate **317**, *465, 523*
Opinion, caution as to expression of 30
Superior authority, reference to, of.. .. .. 30, 31, 39, *454–6*
(*See* also **Commanding Officer.**)

Charges, Preferential. (*See* **Regimental Debts.**)

Cheap Trains Act, extract from, as to conveyance of troops 615-7

Cheating 104, 111

Children.
Abandonment of.. .. .. 97, 111
Birth, concealment of 97–8, 111
Evidence of .. .. 77 (*a*), 96
Ill-treatment of 97, 111
Maintenance of legitimate and bastard .. 208, **387**, **394–5**
Responsibility for crime 87–8

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Christmas Day.
Exclusion in reckoning time **308**, *453*, *528*
Inclusion „ „ **308**, *528*
Sitting of courts-martial on *497*
Cinque Ports.
Application of Militia Acts to.. .. .. .. 204, 647, 652
„ „ Volunteer Act to 665
Civil Court.
Acquittal or conviction by, bars retrial under military law 33, 35, 44, **309**, **311**, **403**, **404**, *455*, *475*
Certificate of acquittal or conviction by **406**, 629
Conviction of soldier by, evidence of, before court-martial **405-6**, *484*
Courts-martial and military courts, powers over. (*See* **Courts-martial.**)
Definition of **440**, *501*
Desertion formerly punished by .. .. 154 (*e*)
False answers on attestation punishable by 191, 204, **360**
Jurisdiction, none in cases of purely military character 119, 130, 132, **302**
„ not barred by previous acquittal or conviction under Military Law **404**
„ over offences committed by C.Os. outside United Kingdom.. .. .. **403**, **404**
„ „ offences committed by militiamen .. 204, 645-6
„ „ offences committed by persons subject to Military Law 85, **360**, **401**, **403**
Trial by, in certain cases 86
Civilians.
Actions against military officers for acting without jurisdiction, &c. 119, 128, 131-2, 134
Courts-martial, cannot conduct defence before .. 42 (*c*), *507*
„ „ misconduct before, of .. **292**, **377-8**, *492*
Desertion, procuring **396**
Military law, not subject to 1, 4, 7, 131, 152
„ „ „ „ except on active service **417**, **418**, **420**, **433-4**, *458*
Traitorous conduct **273**
Trial and punishment of, for offences committed while subject to military law **401-2**, **417**
Witness (*q.v.*).
Civil Law and Military Law, adjustment of .. 85, 208, **403**
Civil Life, relations of soldiers to 208-210
Civil Power.
Aid of, army reserve called out in 197, **419**, 621, 625
„ militia reserve cannot be called out in **415**
„ yeomanry serving in 205, **416**, **420**, **421**
Refusal of officer to deliver up soldier to .. 208, **298**, **403**, *542*
Civil Prison.
Soldier on march, &c., may be confined in 27, **382**, *596*
Transfer to, from military custody **328**, **329**, **331**, **336**
Civil Process.
Exemption of soldiers in certain cases from .. 208, **392-3**, **403**
Obstruction of, by officer **403**
Civil War not contemplated in English law 4
Clergymen, communications to, not privileged 80
Clothing, &c.
Damaging or making away with **288-9**, *538-9*, *552*
„ stoppages for 33, **386**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Clothing, &c.—*contd.*
Equipments, &c. (*q.v.*).
Militia 171
Personal, stoppages not awarded in respect of *460*
Purchasing from soldiers, penalty for **398-400**
Volunteers, delivery up by, on quitting corps, of 655
,, liable to deliver up on discharge 659
,, non-delivery on demand by, of 666
,, sale by, of public 661, 666
Coast Defence. Calling out Volunteers 206, **416**, 669
Coinage.
Offences in relation to 106, 107, 112
,, ,, form of charge *556*
Coldstream Guards, raising of .. .. 155 (*d*)
Colony.
Active service in, declaration as to **435**, **436**
Attestation, persons specially authorized for purposes of, in **357-8**
Authorized prison, meaning of, as respects **332**, **334**, **336**
Central Legislature **439**, **442**
Channel Islands, when included in term
330, **334**, **381**, **434-5**, *527*, *529*
Colonial forces, Colonial law, application of, to .. **417**, **419**, **421**
,, military law, application of, to 192, **415**, **417-422**
,, raised by colony 192, **421-2**
,, ,, imperial government .. 193, **418**, **420**
Committing, discharging, removing authority **328-330**, **336-7**, *524*
Court-martial, convening, confirming, &c. 38, **321**, **322**, **375-6**, *601*
,, ,, trial by, in 85, **300**
Court of summary jurisdiction, meaning of, as regards .. **441**
,, superior jurisdiction ,, ,, ,, .. **440**
Currency of, declaration as to value of **409**
Cyprus, when included in term **323**, **334**, **439**, *527*
Death sentence in 53, **322**
Definition of **439**, **442**
Detention in 54, **333-8**, **381-2**
Fines imposed in **399**, **409**
Governor of, approval of death sentence by 53, **322**
,, ,, penal servitude **523**
,, as witness *503*
,, confirmation of finding and sentence by **322**, **375-6**
Imprisonment in 53, 54, **333-7**, **381-2**
Indentured labourers, enlistment of 189, **359**, **443**
Isle of Man, when included in term **330**, **333**, **382**, **434-5**, *527*, *529*
Lunacy of person undergoing sentence in **380**
Mutiny Act extended to 12, 13
Penal servitude in 53, **327**, **328-9**, **381**
Possessing responsible Government, meaning of 633
Prisoners in, removal of *526-7*
Prisons in, provisions as to **336**, **380-4**
Protectorates, British, included in term **439**
Royal marines in, application of Army Act, to **424**
Sentences in, power to mitigate or remit **325**
Summary proceedings in, provisions as to **409**, **441**
Command.
Auxiliary Forces, Crown's power of, over .. 170, 617, 633-4, 651
How far justification to subordinate 17, 142-3
Illegal or impossible, disobedience of 130, 135-7
Lawful, disobedience of 16-18, **276**, *536*, *547*
Regulations as to, Crown's power to make 170, 194 (*c*), 202, 207, **340-1**

[*References to the* ***A.A.*** *are in thick type, those to the R.P. in italics.*]

Commander-in-Chief.
Committing, discharging, removing authority **328, 335**
Competent military authority **342, 361**, *524*
History of office 160, 161
Meaning of, in Army Act **437**
Office no longer filled 160
Powers as to C.-M. and punishments .. 53, **325**, **375**, **432**
Qualified officer, under S. 122 of Army Act **375**

Commander-in-Chief in India.
Confirmation, remission, &c., of sentences 52, **325**
Power to convene courts-martial 38
Powers of .. .. .. 160 (*c*), **325**, **342**, **428-9**, **432**

Commander-in-Chief in the Field.
Powers in war on occupied territory, &c. 2
„ on active service—
as to military prisons and detention barracks **343**, **383-4**
as to punishment of N.C.Os. **432**

Commanding Officer.
Adjournment for taking down summary of evidence .. 30, *454-5*
Award of, no appeal from 33
„ or decision of, entry of **312**, *457*
Charges, decision on 29, 30, *457*
„ dismissal of 28, 29, **308**, *454-5*
„ opinion not to be expressed before decision on .. 30
„ procedure on investigation of 25, 28-31, **307-9**, *453-6*
Civil prison, power to commit soldier to 27
Committing, discharging, removing authority **335**
Court martial—
Application for, by 30, 31, 39, **313-4**, *456*, *604*
Disqualified for service on 37, **317**, *465*
Regimental, power to convene .. 38, 39, **313**, **315**, *456*, *516*
Delegation of power by 33, **410**
Detachment of a 33, *525*
Drunkenness, power to deal summarily with 21, 29, 31, 32, **309-311**, **431**, *455*
Field punishment awarded by 32, **309**, **310-1**, *598*
Fines and deductions, power to award 31, **309**
Forms of commitment and discharge by *591*, *592*
Imprisonment cannot be awarded by **310**, **337**
Meaning of term 195, **274**, **282**, **283**, **291**, **310**, **313**, *521*, *525*
Minor offences, power to deal with 29, 33, **310**, **312**
N.C.Os., powers in relation to 21, 32, **308**, **310**, **311**, **431**, **432**
Offence by, out of United Kingdom, triable in High Court **403**, **404**
Offences, investigation of, by 28-33, **308-313**, *453-8*
Pay, forfeiture of, on active service, by 32, **309**, **311**, **387**, **389**
Person not belonging to Forces cannot be dealt with by .. **433**
Punishments, cannot increase after award 33, **312**, *457*
„ detention, award of, by 31, 32, **305**, **308**, **310**, *456*
„ minor, powers as regards 29, 33, **310**, **312**
„ mitigation of 33, **310**, **312**, *457*
„ power to cancel, award, or reduce .. 33 (*g*), **310**
„ summary 29-33, 38, **309-13**, *454-5*, *456*, *462*, *525*, 628-9, 641
Remand of accused 31, *456*
Ship, position of, on board 606
Summary dealing with by—
Barred by conviction or acquittal by C.-M. or Civil Court 33, 44, **309**, **311**, **403**, *455*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Commanding Officer—*contd.*
Summary dealing with, by—*contd.*
Bars retrial by C.-M... .. .. 33, 44, **309–311**, **403**, *455*
Militia 641, 645
N C.Os. and W.Os. exempt from 29, 32, **310**, **430–1**
Power of .. 21, 29–33, 28, **308–312**, **431**, *454–6*, *462*, *525*
Reserve Forces 628–9
Soldier may elect 30, **310**, **311**, *457*
Superior authority, reference to, by .. 29, 30, 31, 39, **308**, *454–6*
Trial of, constitution of court for 37
Volunteer corps, of, powers and duties of .. 206, **416–7**, **430**, 659
Commissions.
Honorary, warrant officers holding **431**, **437**
Power of Commander-in-Chief to issue .. .. .. 160 (*c*)
Resignation of 194
Trafficking in, penalty 15, **398**, *542*
Commissions of Array and of Musters .. .. 150–2, 162 (*c*)
Commitment, procedure for, and forms of *488*, *585–598*
Committee of Adjustment. (*See* **Regimental Debts.**)
Committing Authority **328**, **330–3**, **335**, **336**, **337**, *488*, *523*
Common intent to commit offence 89
Common Law.
Defined 1
Things not subject of theft at .. .. .. 100 (*h*), 103 (*a*)
Communications in war. Interference with 225
Communications, Privileged 79, 80
Commutation of Sentences. (*See* **Punishment.**)
Commuting Authority **325–7**, **340**, *523*
Company, &c., Commander.
C.-M., disqualified for service on 37, **317**, *465*
Power to deal with offences 27, 29, 33, **308**
Competent Military Authority.
For purpose of Part II of Army Act 184, **347**, **351**, **360**, **361**, *525*
„ „ Section 67 of Army Act **338**, *523*
„ „ „ 73 of „ **342**, *524*
Complaints by officers and soldiers.
False statement in making **291**
Prescribed General Officer for *524*
Privileged, if to proper authorities 139, **302**
Procedure **301–2**, **428**
Proper remedy for wrongful arrest 26
Redress of wrongs (*q.v.*).
Comptroller and Auditor General.. 162
Compulsion, when excuse for offence 88
Conduct Book, evidence from .. 60, **323**, *460*, *478*, *484*, *506*
Conduct Sheet.
Company, evidence from 30, *574*, *575*, *604*
Regimental, evidence from .. .. 36 (*b*), **403**, *574*, *575*, *604*
Squadron, Troop, Battery, &c... .. .. *574*, *604*
(*See also* **Regimental Books.**)
Conduct to Prejudice of Good Order and Military Discipline .. .. 16, 23, 57 (*a*), **257**, **298**, **300**, *542*, *555*
Confessions and Admissions. (*See* **Evidence.**)
Confidential Papers, privilege of 79
Confinement.
Authorities for ordering **307**
Barracks, to 32, 33
Civil prison or lock-up, in 27, **382**, *596*
Escape from 27, **288**, *538*, *552*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Confinement—*contd.*
Release from 27
Retention in, unnecessary .. .. .. 28 (*c*), **287**, **307**, *538*
„ until charge disposed of 31
Soldier in military custody is put in 25, 27, **306**
Temporary, in prison, form of order for *596*

Confirmation.
Acquittal, of, not required 51, **322**, **323**, *518*
Confirming authority (*q.v.*).
Conviction, of 36, 51, 53, **322**, **323**, **400**, *519*
Finding and Sentence, alternative charges *489–490*
„ „ authorities having power 52–3, **321–2**, **375**, **376**, *511–2*, *519*, *600–3*
„ „ by unauthorised officer 119, 126, 128, **323**
„ „ Colony, in **322**
„ „ confirmation, nullity of **323**
„ „ „ partial .. 52, **322**, *488*
„ „ delegation of power. (*See* **Delegation.**)
„ „ district court 52, **321**, **376**, **426–7**
„ „ field general court .. **316**, **321**, **322**, *518*, *519*, *520*
„ „ general court 52, **321**, **375**, **426**
„ „ informal or excessive.. .. .. *490*
„ „ invalid without 51, **322**, *519*
„ „ member of court cannot confirm 37 (*e*), **322**, *511*, *519*
„ „ native officers .. .. .. 52 (*e*), *601–2*
„ „ plea to jurisdiction, effect of, where *474*
„ „ provisions, general, as to .. **321–4**, *486–491*
„ „ „ in C.-M., warrants as to.. *600–4*
„ „ regimental court 52, **321**
„ „ Royal Marines, in case of .. **423**, **426–7**
„ „ rules of procedure as to **340**
„ „ ship, in case of trial on board .. **435**, *607*
„ „ when complete **323**
„ „ where proceedings lost *513*
„ „ withholding of 36, 53, **322**, **323–4**, *487*, *512*
Form of *487*, *579*
„ warrants as to, in India and Colonies *600–2*
Promulgation of *488*
Reservation of finding and sentence for .. **322**, *511–2*, *519*, *520*
Signing of **411**

Confirming Authority.
Commutation or remission of punishments by 53, **325**, **339**, **340**, **400**, *488–9*, *520*, *523*
Court-martial, member of, may not be .. 37 (*e*), **322**, *511*, *519*
Delegation (q.v.).. .. .. 52, **376**
Finding and sentence, confirmation of, by 52–3, **321–4**
„ „ revision of, by (*see* Revision *below*).
Officers having powers as 52–3, **321–2**, *511–2*, *519*
Opinion of, proof of *521*
Plea to jurisdiction, duty in case of *474*
Prisons, power to order committal to Indian and Colonial.. **381**
Prosecutor cannot be *468*
Provisions, general, as to powers and duties of 52, **322–3**, *486–7*, *490*, *511–2*
Reference by, to superior authority 53, **322**, *486*, *511*
„ to before finding 48, *481–2*, *573*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Confirming Authority—*contd.*
Remarks by .. .. 53 (*a*), *486*, *488*
Revision, power to send finding or sentence for .. 52–3, **321**, **323**, *487*, *490*, *520*
Royal Marines, in the case of **423**, **426–7**
Sentence, power to mitigate, &c. 53, **325–6**, **340**, **400**, *488–9*
„ „ vary informal or excessive *490*
„ responsible for execution of 53
Warrants empowering officers to act as .. 52, **374–6**, *600–3*

Conspiracy.
Abduct, to 96, 109
Cause mutiny or sedition, to 16, **273**, *535*
Defraud, to 104, 111
Evidence as to .. .. 62, 63, 74 (*a*)
Murder, to 100, 116
Obstruct justice, to 108, 116

Constable.
Billeting and impressment of carriages, duties and powers as to 178, 181, **362**, **365**, **366**, **371**, **373**, **430**, **445**
Definition of, in Army Act **441**
Deserters, apprehension of, by.. .. .. **396**
Exemptions from serving as 622
High 8, 9
Service of notices, &c., to militiamen, by 639, 649, 651
„ „ to reserve forces, by 628
Tower, of the 652

Consuls.
Enlistment, powers of, in connection with .. .. 191 (*e*), **358**
Foreign, exempted from billets **363**

Contempt of Court. (*See* **Courts-Martial.**)

Contractors, military law, application of, to **418**

Convening Officer.
Acquittal of accused no reflection on 46
Charge, responsible for form of 23, 40, *458*
Commanding officer, in what cases acts as .. 38, 39, **313**, *456*, *516*
Court-Martial, delay of, power as to 31
„ district 38, 39, **314–5**, **376**
„ field general 39, **315**, *515–7*
„ „ „ may be president of **316**, *516*
„ general 38, 39, **314–5**, **374–6**
„ member of, cannot be.. .. 37, **313**, **317**, *462*, *465*
„ members of, appointed as detailed by 37, **315**, *462–3*, *558*, *559*, *580*
„ new court, may convene 43
„ president of, appointment of, by 37, **312**, **314–6**, *462–3*, *516*, *558*, *559*, *580*
„ prosecutor, appointment of, by *468*
„ regimental 38, 39, **312–3**, *462*
Duty and procedure of.. 23, 31, 39, 40, **315**, *462–4*, *468*, *474*, *502*
Intention of, not to influence decision of court 46
Judge Advocate, when appointed by *513*, *600*, *602*, *603*
Opinion of, statement and effect of **314–6**, *463*, *521*
Release accused, power to 40, *462*, *473*
Royal Marines, in case of **422**, **423**, **426**
Rules of procedure, power to suspend *515*, *560*
Ship, power to act on board, as **435**
Special pleas, reference by C.-M. to 44, *473*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Convening Officer—*contd.*
Superior authority, power to refer case to .. 40, *462*, *516*, *517*
Warrants by, delegating power 38, 39, **374–6**, *602–4*
,, forms of, to officers to act as *599–604*
Who may act as.. 38
Conveyance of Troops. (*See* **Railway.**)
Convict. (*See* **Military Convict.**)
Conviction.
Civil court, by, bars re-trial under military law 15, 33, 35, 44, **309**, **311**, **403**, **404**, *475*
,, ,, evidence of **405–6**
,, ,, transmission of certificate of, to S. of S. **367**, **372**, **403**, **406**, *484*
C.-M., by, evidence of 44, 49, **406**, *478*, *483*, *485*, *506*, *575*
Confirmation of 36, 51, 53, **323**, **400**, *519*
Consequences of, in addition to punishment 87
Forms of proceedings on *573–9*
Less offence, of 57, **324**
Procedure on 49, *483–5*
Copies of Documents, admissible as evidence **404–7**
Cork, Militia Acts, application of, to City of 648
Cornwall and Devon Militia. (*See* **Stannaries.**)
Corporal Punishment. (*See* **Punishments.**)
Corps.
Appointment to, Army List, &c., as evidence of **405**
,, of militia 634, 635
,, of officers 194, **405**
,, of recruits 186, 191, 194, **348–351**
,, of reservists when called out .. 198, 199, 625, 630
Departmental 194
Meaning of 193–4, **438**, **441**
,, as applied to Volunteers 206
Transfer (*q.v.*).
Correspondence with enemy **269**
Correspondents, Newspaper **418**
Costs of Action for damages **410**
Councils of War 9
Counsel.
Accommodation for 42
Communications to, privileged.. .. .. 79, 80
Courts-martial, contempt of, by **379**
,, when allowed before 46, *507*
Defence, for 42, 46, *507–8*
Prosecution, for.. .. .. 46, *507–8*
Qualification of *509*
Rules as to 46, **379**, *507–10*
Witnesses, examination of, by.. .. .. 46, *508–9*
Counterfeit Coin. (*See* **Coin.**)
Countersign, making known or giving wrong.. .. **271**, **272**, *535*
County.
Contributions towards expenses of militia 149
Lieutenant of (*q.v.*).
Meaning of, in Militia Acts 646–7
Militia, enlistment for 200, 635
Places included in, for militia purposes 650
County Council, officer eligible as member of 210, **395**
County Court Judge, meaning of, in Army Act **441**
Court of Chivalry, origin, constitution, and jurisdiction .. 8, 9
Court of Inquest, when required, and procedure **383**, *524*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Court of Inquiry.
Absence without leave, in case of .. 19 (*b*), **341**, *522–3*, 627, 642
Assembly, constitution, and character *521*
Attendance *521*
Evidence, false, before 75, 79, **293**, *522*
„ given before, is privileged 79, 138, 140, *522*
„ on oath, when taken **340**, **341**, *522*, *523*
False statements before C.-M., inquiry by, in case of .. *494*
Instructions to *521*
Members cannot sit on court-martial 37, **317**, *465*, *467*
„ not sworn **341**, *522*, *523*
Notice of meeting of, to be given *521*
Officer, cannot demand *458*
„ charge against, investigated by 28, *458*
Opinion on conduct of officer or soldier not to be given by.. *522*
Prisoners of war, in case of *522*
Proceedings, accused entitled to copy.. .. .. .. *522*
„ copy of, fee for *522*
„ forwarding of *522*
„ inadmissible as evidence 75, 79, *522*
Re-assembly of *522*
Report, privilege of 138, *522*
Rules as to, power to make **340**
„ „ provisions of *521–3*
Statement as to, in application for C.-M. *604*
Volunteers, in case of 657, 658
Witnesses, cannot compel attendance of civilian *522*
„ privilege of 140
„ questions to.. .. .. *521*
Court of Law, meaning of, in Army Act **441**
Court of Requests in India abolished **395**
Court of Summary Jurisdiction.
Constitution of, in England **408**
Ireland (*q.v.*).
Meaning of, in Army Act **440–2**
Proceedings before, under Army Act **407–9**, **442**
Courts-Martial.
Abroad, power to constitute 12, 13, **316**
„ warrants giving power to convene 38, **375**
Accommodation for accused, counsel, &c., at.. 42
Acquittal by, bars retrial for same offence by C.O. or C.-M. 35, **309**, **311**, **400**, *455*, *475*
Actions against members of. (*See* **Actions.**)
Active service, on (*q.v.*).
Adjournment—
Accused, illness or death of **320**, *498*, *499*
Before end of trial *498*
Charge, for purpose of amending 44, *473*
„ where no valid 42, *468*
Field general *519*
Finding, where legal effect of, doubtful *481–2*
Judge Advocate, absence, disqualification, &c., of *467*, *497–8*, *513*
Place and time, to what, allowed *497*
President, absence, disqualification, &c., of 42–3, **318**, *464*, *467*, *469*, *497–8*
Reasons for 42, 44, *454*, *464*, *467*, *497*, *498*
Report to convening authority 42, *467*, *468*
Rules as to, power to make **340**
Summary of evidence for, purpose of taking 30, *454–5*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Courts-Martial—*contd.*
Adjournment—*contd.*
When court below legal minimum 42, 43, *464*, *469*
„ improperly constituted.. .. .. .. 42, *467*
Witness, absence of *461*, *503*
Appeal from, not allowed 119
Application for, by C.O. 30, 31, 39, **314**, *456*
„ „ documents to accompany 39, *604*
„ „ duty of convening officer in respect to 31, 39, *462*
„ „ form of *604*
„ „ memoranda as to *582*
„ „ to be disposed of at once 31
Arraignment of accused. (*See* **Arraignment.**)
Assembly, delay in. (*See* Delay, *below*.)
„ forms for *558–560*, *580*
„ order for, of regimental court *456*
„ procedure after 41, *463*, *492*
„ time limit for, by C.O. 39
Auxiliary forces, constitution of, for trial of member of 37, 207, **422**, *466*
Bona fide judgment of *514*
Books on military law to be before *492*
Censure on individuals by, caution as to *511*
Challenge of members by accused 42, 43, **317**, *468–470*, *500*, *517*
„ „ „ form of *561–3*
Civil courts, control of, over—
Adjustment of Military and Civil Law **403–4**
Excess of jurisdiction of military courts, &c. .. 3, 119 (*seq.*), *514*
How exercised.. 120
Civil offences, framing of charge for *459*
„ „ triable by 3, 15, 23, 85–118, **299**, **300**
„ „ when jurisdiction to try, should be exercised by 85, 86
Civilian, action by, against members of, for acting without jurisdiction 119, 128, 131–2
„ misconduct of, at **292**, **377–8**
„ „ „ in India, at **427–9**
Closing of court .. 48, **320**, *468*, *469*, *480*, *487*, *488*, *496*, *497*, *519*
Colonies (*q.v.*).
Commanding Officer's powers. (*See* **C.O.**)
Composition of, for trial of C.O., and other officers 37, 41, **314**, **315**, *466*
Constitution of 36, 37, 39, **312**, **314**, **316**, *463*, *466*
„ enquiry as to legality of 41–2, 119, *466–7*
„ illegal 119, **400**
Contempt of court by civilians.. .. .. .. **292**, **378**, *492*
„ „ „ form of commitment .. *598*
„ „ by person subject to military law 50, **292–3**, *492*, *549*
Convening. (*See* **Convening Officer.**)
Conviction by, bars re-trial by C.O. or C.-M. 35, **309**, **311**, **400**, *455*, *475*
Counsel at 42, 46, **379**, *507–9*
Court of Inquiry, proceedings of, inadmissible as evidence before 75, 79, *522*
Criminal liability of members of 120, 141
Crown, power of, to constitute 12–14
Custody of accused at 42
Death, sentence of, by. (*See* **Death.**)
Delay in assembling **287**, **306**, **308**, *456*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Courts-Martial—*contd.*
Delay in, convening officer's power as to 31
„ report as to **306**, **308**, *453*, *463*
Delegation of powers. (*See* **Delegation**.)
Descriptions of 35
Discretion of, as to sentence 51
Dissolution of **320**, *463*, *488*, *498*, *499*
District—
Assembly of, form for *559*
Composition of 36, **314**, **317**, *463*, *465-6*
Convening of. (*See* **Convening Officer**.)
Corps of members of, rules as to 41, *465-6*
Death penalty, cannot award .. .. .. 35, 86 (*c*), **314**
Delegation of power to confirm. (*See* **Delegation**.)
Finding and sentence, confirmation of 52, **321**, **376**
Members of, qualification of 37, **314**, *465*
Penal servitude, cannot award .. .. .. 35, 86 (*c*), **314**
President of, qualification of .. 37, **314**, **315**, **431**, *463*, *467*
Punishment by, limitations on power of 35, 86 (*c*), **314**, **315**, **431**
Right of soldier to elect trial by 29, 30-33, **309**, **310**, **311**, **312**, *454*, *456*, *457*
Early history of 9, 10
English Law to apply to 1, **378-9**, *501*
Evidence (*q.v.*).
Field general—
„ abroad or on active service, can only be convened 39, **315-6**, *515-6*
„ acquittal by **322**, *518*
„ adjournment of *519*
„ arraignment of accused at *518*
„ assembly of, form for *580*
„ charge before *517*
„ composition of 39, **316**, *516*, *517*
„ convening, restrictions on .. 39, **315-6**, *515-6*
„ death sentence by, confirmation of .. **321**, *519*, *520*
„ „ „ must be unanimous .. 39, **316**, *518*
„ defence by accused before *518*
„ definition of terms in Rules relating to .. *521*
„ finding and sentence, confirmation of **316**, **321**, **322**, *519*, *520*
„ members of, disqualification of **317**, *516*
„ oaths, forms of *517-8*
„ object and jurisdiction of .. 39, **313**, **316**, **343**
„ offences triable by 39, **300**, **316**, *516*
„ penal servitude, confirmation of sentence of **321**, *519*, *520*
„ plea to jurisdiction of *518*
„ powers, general provisions as to .. 39, *516*, *519*
„ president, appointment of **316**, *516*
„ proceedings of **376**, *517*, *519*, *520*
„ „ forms for *581-2*
„ Rules of Procedure, application of, to .. *520*
„ several accused, trial of.. .. .. .. *517*
„ transfer from, to another court.. .. .. *519*
„ trial, procedure at *517*, *518*
„ view of place, &c. *519*
„ votes, general provisions as to *519*
„ witnesses, oath to *518*
Finding and sentence (*q.v.*).
Forms for assembly of *558-560*, *580-2*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Courts-Martial—*contd.*
Forms of charges for offences in relation to *540*
General—
Charge to be submitted to judge-advocate-general .. *463*
Composition of 36, 37, **314**, *463*, *465-6*
Convening of. (*See* **Convening Officer.**)
Corps of members of, rules as to 41, *465-6*
Death penalty, alone can award 35, **314**
Delegation of power to confirm, &c. (*See* **Delegation.**)
Finding and sentence of, confirmation of .. 52, **321**, **375**, **426**
Forms for assembly of *558*
Members of, qualification of 37, **314**, **317**, *465*
Object of 38
Officers, alone can try 35, 39, **314**
Penal servitude, alone can award 35, **279**, **314**
President of, qualification and rank of 37, **314**, **315**, **431**, *463*, *466*, *467*
Proceedings of, form of *560-579*
Punishment not increased because of trial by 49-50
Waiting officers should be appointed for *463*
Hours of sitting 41, *497*, *498*
Illegal sentence by 128
Incidental questions arising at, procedure on *500*
India (*q.v.*).
Insane persons, trial &c. of. (*See* **Lunacy.**)
Judge advocate (*q.v.*).
Jurisdiction of, amenability of accused to 42, *458*, *467-8*
„ excess of, powers of civil courts in case of 3, 119, 120, **410**
„ in civil offences 23, 85-6, **299**, **300**
„ restrictions as to 35, 36, **300**, **400-4**
„ ship, in case of offences on board 36, **435**
„ special plea to 44, *469*, *472*, *473-4*, *518*
Majority of opinions, decision to be by *499*, *519*
Members of—
Absence of, effect of 48, *499*
Actions against. (*See* **Actions.**)
Appointed or detailed by convening officer 37, *462-3*
Auxiliary forces, officers of, when included as 37, 170, 207, **317**, **422**, *466*
Cannot be added after arraignment *499*
„ confirm finding or sentence **322**, *519*
Corps of, generally immaterial 36, 41, **317**, *465-6*
Disqualifications for acting as .. 37, 42, **314**, **315**, **317**, *465*
Eligibility of 41, **312**, **313**, **314**, **315**, *465*, *467*, *516*
Errors of judgment, not liable for 132
Illness of, effect of *498*
Legal minimum 36, 42, 43, 119, **314**, **315**, **320**, *462*, *463*, *464*, *467*, *469*, *488*, *498*, *499*
„ „ President to be included in calculating . *467*
List of, to be given to accused 40, *461*
New 43, *464*, *499*
Objection by accused to. (*See* Challenge, *above*.)
Opinions of, to be stated separately on each charge (*see also* Vote *below*) 48, *480-1*, *499*, *500*
Personal interest in case, disqualified by 37, 41, *465*
Precedence of 41
Rank of 41, **314**, **315**, *466*
Responsibility of, for irregular procedure *490-1*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Courts-Martial—*contd.*
Members of—*contd.*
Seating of 41, *492*
Supernumerary, previous attendance as, required .. *465*
Swearing of 43, **318**, *470, 471, 500, 517*
Vote, cannot abstain from giving 48, *499*
„ must be kept secret. (*See also* Opinions, *above.*) .. **319**
Witness, competent for defence only 77, **317**, *502*
Memoranda for guidance of *581–3*
Military knowledge of 57, 58 (*a*), **272**, **274**, **277**, **284**, **286**, **290**, *501*
Militia (*q.v.*).
New, convening of 43, **329**, *464, 473, 498*
Oath to members and officers 43, **318–9**, *470–2, 500, 517*
Objections to members, interpreters, &c. 42, 43, **317**, *468–470, 500–1, 517*
Offences in relation to **291–3**, *540, 554*
(*See also* Civil, *and* Contempt *above.*)
Officer cannot demand, when under arrest 26
Officers attending for instruction—
Oath or declaration by 43, **318–9**, *470–1*
Presence when court closed *497*
Officers in waiting at—
Appointed or detailed by convening officer .. .. 36(*e*), *463*
Challenge of, filling vacancies *469, 470*
Names given to accused *461*
Vacancies filled by 41, 42, *461, 463, 469*
Open, rules as to 42, 48, **322**, *483, 487–8, 496–7*
Opinions to be taken separately 48, *480–1, 499, 500*
Orders of, forms of **340**, *528, 585–604*
Penal Servitude (*q.v.*).
Perjury, when triable before 106, **293**
Persons not belonging to H.M. forces, trial of, by **433–4**
Plea (*q.v.*).
President (*q.v.*).
Private deliberations 48, **320**, *496–7*
Procedure, general provisions as to 39–51, **320**, **340**, *466–472, 492–501, 528*
„ irregular, responsibility for *490–1*
Proceedings of—
Copy of, payment for.. .. .. **376–7**, *512, 520*
„ right of person tried to **376**, *512*
Custody of 49, *511*
Erasures not allowed in *510*
Evidence, admissible as **406–7**
Field general court, form of, in case of *517, 581–2*
Forms of 49, *528, 560–579, 581–2*
Information or advice to court to be entered in *514*
Inspection of *511*
Loss of *512, 520*
Meaning of 49
Memoranda as to *583*
Preservation of, period of, &c. *512, 520*
Questions to be entered whether answered or not .. 80
Rules as to entries in, &c. 49, *510–1, 514, 517*
Signing and dating of .. 49, *483, 486, 487, 491, 512, 561*
Special reports not to be entered in 49, *510, 511*
Transmission of 51, *483, 486, 491, 499, 511, 520*
Prosecutor (*q.v.*).
Public, open to 42, 48

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Courts-Martial—*contd.*
Punishments by (*q.v.*).
Re-assembly of, for revision of sentence *487*, *488*
Regimental—
Assembly, forms for *559*
,, limit of time for *456*, *462*
C.O. may convene 39, **312–3**, *456*
Composition of 36, **312**, *462*
Convening officer of 38, 39, **312–3**, *462*
Finding and sentence, confirmation of 52, **321**
Members of, qualification of.. .. .. ..36, **313**, *462*, *465*
Object of 37
Powers of 35
President of, qualification and rank of 37, **312**, *462*
Punishment by, limitations on power of 35, 86 (*c*), **312**, **314**, **334**, **337**, **357**
Ship, may be held on board in case of N.C.O. .. 36, **313**, *607*
,, procedure on board 38, **312**, **313**, **435**, *606–7*
Remand for trial by, procedure on 31, 39, *456*
Reporters, admission of.. 48
Reserve forces, offences triable by 35, **415**, **421**, 621–2, 625, 628–9, 645
Right to have, when character impugned 40
Royal Marines (*q.v.*).
Rules as to power of Crown to make **340**
Sentence. (*See* **Finding and Sentence.**)
Service, forfeiture of. (*See* **Service.**)
Several accused, trial by one court; procedure .. 43, *500*, *517*
Ships. (*See* Regimental—Ship, *above.*)
Sittings, period of *498*
Soldiers' right to claim trial by 29, 30–33, **309–312**, *454*, *456*, *457*
Special reports by, to be made in separate document 49, *510*, *511*
Summary, abolition of **324**
Superior authority, reference of case to .. 30, 31, 39, 40, *454–5*
Time limit for application for 39
,, ,, commencement of trial 35, 36, **401**, **402–3**, **422**, *475*
Transfer from field-general to ordinary *519*
Trial (*q.v.*).
Validity of, not affected by invalid appointment of J.A.G.. **313**
View place, power of, to 55, **320**, *497*, *519*
Volunteers (*q.v.*).
Warrant officers (*q.v.*).
Warrants, in relation to. (*See* **Confirming Officer** and **Convening Officer.**)
Witnesses (*q.v.*).
,, for prosecution must not sit on .. **77**, **317**, *465*, *502*, *516*
,, power of, to call 47, *502*, *506*
Cowardice, offences of **268–9**, *534*, *544*
Creditor of soldier, restrictions on 208, **390**, **392**, 674
Crescent used for Red Cross on Hospitals, &c., by Mahommedans 235
Crimes. (*See* **Offences**, *and under each Offence.*)
Crimes and Punishments under the Army Act **267–300**
Criminal Evidence Act, 1898 75 (*f*), 76, **379**, **400**, *480*, *501*, *504*
Criminal Law, authorities on .. .. 86 (*b*)
Criminal Proceedings, liability of military officers to 3, 120, 141–144
Criminal Responsibility.
Accidents, in relation to 91
Compulsion, in relation to 88
Consent, in relation to 91, 94, 96

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Criminal Responsibility—*contd.*
Drunkenness, in relation to 22, 88
Force, for use of.. 92
Homicide, for, where no legal excuse 98
Ignorance, in relation to 87–89
Innocent agent, act done through, for 89
Knowledge of intended offence, in relation to 90
Necessity.. 88
Negligence 92, 94
Omission, acts of, in case of 94
Parties to offence, of 89
Criminals, &c., compulsorily enlisted in army .. 152, 156 (*f*)
Cross-examination (*see* **Witness**).
Crown.
Army in peace, statutory power to govern 13, 14, 159
„ war, prerogative power of .. .. .. 13, 14, 137 (*a*)
Lieutenants of counties appointed by, under Militia Act 147 (*d*), 201, 642
Officers hold at will of the .. .. 124 (*a*)
Powers of, in relation to articles of war .. 12–14, 24, 137 (*a*), **339**
„ „ „ discharge of soldiers 185, 190
„ „ „ militia .. 169, 170, 201, 634, 651–2
„ to maintain good order 4
„ to make regulations as to command 194 (*c*), 202, 207, **340–1**
„ „ rules of procedure **340**
Proclamation of martial law in a colony by the .. .. 4 (*d*)
Purveyance, right of 147, 177, 180
Crying down Credit 208
Currency, British, equivalent in India and Colonies .. **469**
Custody.
Civil **329, 336, 411**
Intermediate, in case of military convict .. **327, 329, 332, 384**
Retention in, before trial, report on necessity of **287**, *453*
„ unnecessary **287, 307–8**, *453*
Violence to custodian **277**
(*See* also **Military Custody.**)
Custom of the Service.. .. .. 2 (*c*), 134, **291, 410**, *525, 527*
Customs of War .. .. 2, 2 (*c*)
Cyprus, included in term Colony in Army Act **323, 334, 439**, *527*

D.

Damage, compensation for, stoppages to make good 33, 86, **385**, **386–9**, *460, 484, 532*
Damages.
Actions for, in respect of excess, &c., of jurisdiction 120, 128–141
„ tender of amends 144, **409**, 646
„ time limit for bringing 144, **409**, **410**
„ what courts competent to try 144, **410**
Dangerous Acts, offences and penalties 97, 113
Dates, insertion of, in charge *459, 482, 531*
Day, reckoning of, for purpose of stoppages .. **387–8, 389, 390**
Deaf and Dumb as witnesses 77
Death.
Funeral expenses 670, 679
Justification and responsibility for causing 93, 98
(*See* **Regimental Debts.**)
Sentence of, active service, on (*see* Offences *below*).

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Death—*contd.*
Sentence of, articles of war, punishment under, by 24, **339**
,, colonies, in, approval by Governor, when required 53, **322**
,, commutation of .. **306**, **325**, *585* (*b*), *587* (*d*), (*g*)
,, confirmation of 52, **321**, *519*, *520*
,, courts-martial, district, cannot award .. 35, 86 (*c*), **314**
,, ,, field-general, verdict must be unanimous 39, **316**, *518*
,, ,, general, can award.. .. .. 35, **314**
,, ,, ,, two-thirds majority necessary **314**, *500*
,, ,, regimental, cannot award.. 35, 86 (*c*), **312**
,, desertion, formerly punishable by .. 11, 12, 13, 154 (*c*), 171
,, execution of, responsibility for 53, 144
,, fraudulent enlistment, formerly punishable by 12, 13, 157
,, India, approval by Governor-General, when required 53, **322**, **324**
,, mutiny, formerly punishable by 12, 13
,, offences in relation to enemy punishable by .. **267-9**
,, ,, punishable by **273**, **274**, **276**, **299**
,, ,, ,, on active service by 23, 24 (*c*), 53, 171, **268**, **271**, **278**, **306**, **322**
Violence, by, in prison or detention barrack in India .. **383**
Debt, Regimental. (*See* **Regimental Debts.**)
Debtors released conditionally on enlisting .. .. 152, 156 (*f*)
Debts of soldiers 208, **392**, **393**
Declaration.
Dying, when evidence 68–9
False **290**, **390**, *539*
Of deceased persons, when evidence 70
Solemn, in lieu of oath—
Before investigating officer *454*
False, respecting pay **390**
Forms of *471*, *472*, *505*, *518*
Members or officers of courts, by—
Court of inquiry, on recovered prisoners of war .. *522*
Courts-martial 43, **319**, *470–2*, *518*
Refusal to make, or oath **291**, *505*, *540*
Witnesses, by—
Before C.O... .. .. **309**, *454*
,, C.M... .. .. 47, 77, 96, **319**, *505*, *518*
,, court of inquiry **341**, *522*
,, investigating officer *454*
Refusal to make **291**, *505*, *540*
Declaration of St. Petersburg, 1868 226–8
Decoration. (*See* **Military Decoration.**)
,, power to forfeit extends only to Military .. *484–5*
Deductions from Pay. (*See* **Pay.**)
Defence.
Accused (*q.v.*).
Form of proceedings relating to *567–572*
Procedure 45–6, *473–480*, *493–4*, *508*, *518*
,, when accused only witness to facts 45, *478–9*
,, ,, witnesses are called 45, *479*, *480*
Deferred Pay. (*See* **Pay.**)
Definitions and Explanations of Terms.
Active list **414**
Active service, on **435–6**
Army Act *528*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Definitions and Explanations of Terms—*contd.*

Auxiliary forces **438**
Battalion **439**
Beyond the seas **439, 442**
Certified copy *485*
Charge **307**, *438*
Charged with care of **284**
Colony **439, 442**
Commander-in-chief **437**
Commanding officer 195, **274, 282, 283, 291, 313**, *525*
„ „ of a corps or portion of corps *521*
Commutation of sentence **326**
Competent military authority .. **347, 351, 360, 361**, *523, 524, 525*
Constable **441**
Corps 206, **438, 441**
County Court Judge **441**
County for purposes of Militia Act 647
Court, civil **440**, *501*
„ of law **441**
„ „ summary jurisdiction **440–442**
„ superior **440**
„ supreme **440**
Discharging authority *524*
Embezzlement 21, 101
Enemy **439**
Foreign country **439, 442**
Full pay service **414**
Governor **440**
Governor-General **439**
Half-pay **414**
Horse **441**
India **439, 441**
„ British **439**
„ native of **439**
Judicial notice 57, *501*
Justice of the Peace **355–6**
Lieutenant of county 619, 664
Lord Lieutenant of Ireland **436**
Military convict **327**
„ custody **306, 307**
„ decoration **439**
„ prisoner **332**
„ rewards **439**
Militia **438**, 648
Misdemeanour **440**
Mitigation of sentence **326**
Month **442**, *528*
Non-commissioned officer **437**
Oath **440, 442**
Officer **437, 441**
„ superior **275, 437**
„ who investigated charge **317**
Out-pensioners of Chelsea Hospital 629
Personal interest *465*
Police authority **441**
Prescribed **440**, 630, 648
Prison, authorized **332, 333, 336, 384**
„ military **333, 382, 383, 384**
„ penal servitude **331**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Definitions and Explanations of Terms—*contd.*
Prison, public **333, 335, 336, 382**
Proceedings 49
Proper military authority *528*
Purporting **406**
Railroad 618
Regimental **439**
Regular forces **437, 441**
Remission of sentence **326**
Reserve forces **437**
Retired pay **414**
Secretary of State **436**
Soldier **437, 441**
„ undergoing detention **332**
Station beyond the seas **439**
Stealing 100
Summary conviction **442**
„ Jurisdiction Acts **440**
Swear **440, 442**
Unlawful assembly 211
Volunteers and volunteer forces **438**, 664
Year **442**
Defraud, conspiring to 104, 111
Delegation.
Commanding officer's powers to award minor punishments.. 29, 33
Courts-martial—
District, of power to convene and confirm 39, 52, **314, 315, 321, 376**, *603-4*
General, of power to convene and confirm 38, 52, **314, 321, 374-5**, *602-3*
Regimental, of power to convene 39
Secretary of State's duties as to descriptive return of deserters **397**
Delirium Tremens 88, **285**
Departmental Corps and Departments of the Army .. 194
Depositions, admissibility of, as evidence 70
Deputy-Lieutenant. (*See under* **Lieutenants of Counties.**)
Descriptive Return of Deserter, admissible as evidence .. **405**
„ „ sending and form of **397, 446**
Deserter.
Apprehension of, by civil power **396-7**
Descriptive return of **397, 446**
Falsely pretending to be, penalty **395-6**
Form of order for removal in military custody *597*
Regimental debts 675, 683-4
Desertion.
Absence without leave, and, criterion between 18, 19
„ „ „ conviction for, on charge of desertion 23, **279, 282, 324, 341**
Active service, on **278, 279, 403**
Assisting or conniving at **281, 282**, *536, 548*
Attempted, conviction of, on charge of desertion and *vice versâ* .. .. 19, 57 (*b*), **279, 324**
Confession of **341-2**
Court of inquiry, effect of record of, as conviction for desertion **341**
Death, formerly punishable by .. 7, 11, 12, 13, 154 (*c*), 171
Deliberate evasion of special duty is 18

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Desertion—*contd.*
Distance not a criterion.. 18
Drunkenness, absence caused by 22
Evidence of 61, *493*
False statement as to being guilty of .. **279**, **291**, **395**, *539*, *554*
Forfeiture of previous service for 19, 185, **342**, **345–6**
Forms of charges *536*, *548*
Fraudulent enlistment, when chargeable as 19, 20, **279**
Furlough, by soldier while on 19, **412**
General service, liability to, for 186, **350**
Inducing **396**
Intention, evidence of 18, 19, 22, *484*
Kit, disposal of 683
Militia 172, 204, 639–642
New trial in case of 36
Non-effective account of deserter 683–4
Offence of, what constitutes 18, 19, **278–280**
Pay stopped during 32, **342**, **386**, **388**
Punishment for 19, 154, 185, 186, 187, **278–280**
Regimental Debts Act, application of, in case of .. 675, 682 4
Reserve forces 625–6
Surrender, fact of, to be stated at trial for *484*
Surrendering after 19
Trial for, after ceasing to be under military law **401**
,, time limit for, after offence . .. 35, 36 (*h*), **401**, **403**

Detachment, commanding officer of, power of 33, *525*

Detention.
Barrack—
Colonial, removal of prisoners or soldiers to or from **333–4**, *526*
Commander-in-chief's power as to, on active service .. **383**
Confinement in 54, **332**, *457*
Contempt of court, sentences served in **292**, *492*
Forms of commitment to *587*, *589*, *590*, *591*, *596*
,, ,, discharge from *592*, *597*
,, ,, removal from *592–6*
General provisions as to 54, **332–4**, **382–4**
Hard labour in **334**
Imprisonment, serving sentence of, in 54, **332**
Naval prisoners may be sent to **334**
Removals to or from, in U.K. and abroad **332–3**
Transfer to **332**
Barrack, Branch—
Confinement in 27, 54, **334**, *457*
Hard labour in **334**
Military custody includes 27, **334**
Soldiers may be confined in, while awaiting trial 27
Channel Islands, sentences of, in **434–5**
Commanding officer's power to award summarily, .. 31, 32, **308–9**, **310**, *456–7*, *591*
Colony, sentences of, in 54, **336–7**, **381**
Commutation of **305**, **306**, **326**, **327**, **350**, **351**
Day's, how calculated, for purposes of stoppages .. **388**, **390**
Discharge with ignominy cannot accompany sentence of .. 24, **306**
Foreign countries, sentences passed in **334**, **337**
Forms of orders, power to make rules as to **340**
Guard detention room, temporary confinement in 27, *457*
Imprisonment to be commuted to, in certain cases 24
India, sentences in 54, **336–7**, **381**
Isle of Man to be deemed colony for purposes of **434–5**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Detention—*contd.*
Lunacy of soldier undergoing **380**
Month's, means calendar month .. .. **442**, *528*, *577* (*a*)
N.C.O. sentenced to, deemed to be reduced to ranks .. **432–3**
Pay stopped during 32, **386**, *457*
Place of, in punishment scale 24, **303**, **304**
„ where served 54, **332–4**, **337**, **381**
Rooms, sentence served in **334**
Rules as to 24, **332–9**
Sentence of, execution of 54, **332–8**
„ maximum which may be imposed by C.-M. **303**, **339**
„ may not be carried out in a prison 54, **332**
Soldier undergoing—
Commitment of, procedure *488*
Conveyance to or from hospital, &c. **332**
Discharge of **333**, **334**
Disposal of .. .. 54 (*a*)
Escape of **334**
Forms of orders relating to **334**, *589–598*
Insanity of **380**
Power to bring up as witness, for trial, &c. **333**, *593*
Ship, on board, restraint and custody of **332**, **411**
United Kingdom, provisions as to sentences of, in **333–5**
Warrants for, power to amend.. .. .. **411**

Devon Militia. (*See* **Stannaries.**)

Directors of Companies, restrictions on officers being .. 210

Discharge.
Abroad, conveyance home in case of 190, **354–5**
Certificate of character given on 190, **357**
„ discharge „ „ 190, 197, **357**
Competent military authority, by order of .. .. 190 (*c*), **357**
Confirmation of proceedings on **357**
Conveyance home or to place of attestation, on .. 190, 191, **355**
Crown's power to 185, 190, **357**
Delay in **357**
Disgrace, with, enlistment after 191, **295**, *541*, *554*, 636
„ „ meaning of **295**, 636
Evidence of **404**
False statement as to **291**
Ignominy, with, cannot accompany sentence of detention .. 24, **306**
„ „ in addition to penal servitude, &c... .. **303**
„ „ power of court-martial to sentence to .. **303**
„ „ regimental court cannot sentence to 35, **312**, **357**
„ „ remission of, if imprisonment commuted to detention 24
Invalided soldier, of 186
Lunatic soldier, of 190, **355**
Militia, provisions as to 204, 636
Purchase of, within three months of enlistment .. 188, **347–8**
Regulations as to .. .. 190 (*c*), **356–7**
Reserve Forces, certificates 196, 197
Right of soldier to, after prolongation of service **353**
„ „ on completion of term **354**
„ „ where continuing in service after 21 years **353**
„ „ „ illegality, &c., in attestation .. 189, **361**
„ „ „ serving without attestation .. 188, **361**
Sentence not affected by **401**
Trial after, limit of time for 35, **401**, **402**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Discharging Authority **328–332**, **334**, **335**, **337**
Application for remission of sentences by **334**
Officers prescribed as *523*, *524*
Discipline of Army. (*See* **Military Discipline.**)
Disclosures, injurious **297**, *542*
Disease.
Concealment of **278**
Feigning or aggravating **284–5**, *537*, *550*
Disgraceful Conduct.
Forms of charges *537*, *549–550*
Offences and penalties .. .. 24 (*c*), **284–6**
Disguised at Night, offence to be 113
Disloyal words, use of **297**, *542*
Dismissal.
Navy (*q.v.*).
Officer, power of Crown to order 119
„ punishment of, by **302**, **398**
Sentence not affected by **304–5**, **401**
Volunteer, power of C.O. or C.-M. to order 206, **430**, 659
Warrant officer, power of C.O. to order 35, **431**
Disobedience to Lawful Command.
Charges of, framing 16, *536*, *547*
Graver offence of 16, **276**
Illegal or impossible commands, to 129, 130, **276–7**
Less offence of 16, **276**
Religious scruples no excuse for 18, **276**
Superior officer, to 16, 17, 18, 22, **276–7**
Disorderly House, keeping of 97, 113
District Court-Martial. (*See* **Courts-Martial.**)
Doctors, communications to, not privileged 80
Documentary Evidence Act, 1895 65
Documents.
Admissibility of, may depend on time of possession 62
Army Act, provision in, as to proof of, and of contents of 65, 71, **404–7**
Attestation of, when required to be proved 63
Copies of 63–65, **404–7**
Definition of, for purposes of forgery 105
Evidence of 63, 64, 65, 71, **404–7**
Execution of 63
Falsifying official **290**, *539*, *553*
Forging and uttering 105–6, 114
Forwarded to President of C.-M. *463*
„ with application for C.-M. 39, 604
Issued by military authorities, amendment of **411**
„ „ unauthorized person **412**
Memoranda on forms and *583–4*
Primary evidence of 63, 64
Private, proved by production 63–64
„ secondary evidence of 63, 64
Production of, by prosecutor *478*, *486*
„ refusal by witness **292**, **377**, *505*, *540*
„ rules as to 79, **379**, *501*
„ verbal request for, may be disregarded .. *503*
Public and private, distinction between 63
„ copies of, when admissible 64, 65, 71, **404–7**
„ Documentary Evidence Act, 1895, provisions of, as to proof of 65
„ hearsay evidence, application of rule of, to 71

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Documents—*contd.*
Public, issued by Board of Agriculture and Fisheries, as evidence .. .. 65 (*b*)
„ meaning of 64
„ proof of 64
„ statements in, when admissible as evidence 71
Rules as to reception in evidence of 80
Secondary evidence of 63, 64
Signing in blank, penalty for **290**, *539*
Suppression of, penalty for **290**, *539*
Dog Stealing .. .. 103 (*a*), 117
Driving Furiously 97, 113
Drogheda, application of Militia Act to .. .. .. 651 (*a*)
Drunkenness.
Accused not to be brought up while drunk 29
Active service, on .. .. 21, 24 (*c*), **309**
Aggravated offence of .. .. 24 (*c*)
Court-martial, trial by, for 21, 22, **286**
Drugs, produced by 21, 88
Duty, after being warned for 22, **309**
„ on 21–22, **309**
Fine for 22, 31, **286**, **305**, **309**, **310**
Forms of charges for *537*, *551*
Offences during, responsibility for 22, 88
Officer to be tried for 21
On post, framing of charge in case of *531*
Punishment for. (*See* Fine, *above.*)
Sentinel drunk on post 23, **271**, **272**, *535*
Summary dealing with, by C.O. 21, 29, 31, 32, **309–311**, **431**, *435*, *457*
Dublin, application of Militia Acts to 648
Duelling, offence of **298**, *542*
Duty.
Officers exempt from licence duty for soldier servants .. 209
Probate of will of soldier dying on service, exempt from stamp duty 209
(*See* also **Regimental Debts.**)
Dwelling House, meaning of, in relation to burglary .. .. 103 (*c*)
Dying Declarations, as evidence 68–69

E.

Earl Marshal, office of 8, 9
Edinburgh, application of Militia Act to 648
Effects of Officers and Soldiers. (*See* **Regimental Debts.**)
Elections.
Right of voting at 210, **430**, 644
Soldiers not being electors, excluded from 210
Embezzlement.
Evidence of .. .. 71 (*a*), 102
Meaning of term 21, 101–2
Military offence, when to be treated as 20
Prevention, officers' responsibility for 21
Prosecutor to make opening address where charge of .. *477*
Public servants, by 102
Punishments for 113, **284**
Receiving property embezzled 104, **285**, *537*
Reference to confirming authority as to whether facts constitute *481*, *482*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Embezzlement—*contd.*
Regimental or public goods, of.. .. ..20, 21, **283–5**, *537*, *549*
Restitution of property embezzled **343**
Theft, acquittal on charge of, bar to trial for embezzlement 102
„ conviction of embezzlement on charge of, and *vice versâ* 48, 57, 102, **284**, **324**

Enemy.
Meaning of, in Army Act **439**
Military Occupation of country (*q.v.*).
Misbehaviour before **268**, **269**, *534*, *544*
Offences in relation to **267-270**, *534*
Rioters, &c., may be treated as 1, **439**

England, imprisonment with hard labour in **304**

Enlistment.
Aliens, regulations, &c., as to 188, 189, 190, **358**
Appointment to corps on 186, 191, 194 **348**, **349**
Apprentices, of 189, **358–9**, **443**
Army Act, application of, to enlistment under previous Acts 187
„ general provisions of, as to **344-361**
Attestation (*q.v.*).
Auxiliary forces, application to, of Army Act .. **429**, **430**
Bounties formerly paid on 156. 157
Character, false statement as to, on 191, **360**
Colonies, in 192, **357-8**
Competent military authority for purposes of **347**, **361**
Completed by attestation **347**
Criminals, debtors, &c., released conditionally on .. 152, 156 (*f*)
Error in, claim to discharge for 189, **360-1**
Extension of term of original 184, **345**
False answers or declaration on. (*See* **Attestation.**)
Fraudulent—
Confession of, procedure in case of.. 19 (*b*), 185, **341-2**, **345**
Desertion, distinction between, and 18, 19, 20
False statement as to.. .. .. **291**, *539*
Forfeiture of service 185–6, **341-2**, **345-6**, **403**, **425**
Forms of charges for.. .. .. *536*
General service, liability to, as punishment .. 186–7, **350-1**
Militia (*q.v.*).
Offence of 191, **279-281**, *536*, *548*
Pay stopped during time in custody on charge of **341–2**, **388**
Punishable formerly by death 12, 13, 157
Reserve forces.. .. .. 204, 640
Trial, after ceasing to be under military law 35, **401**
„ time limit for commencement of .. 35, 36 (*b*), **401**, **402**
Volunteers 204, 640
Yeomanry 204, **280–1**, 640
General service, for 186, **348**
History of 152–4, 156-8
Ignominy, of men discharged with 191, **295**, *541*, *554*, 636
Indentured labourers in Colonies, of 189, **359**, **443**
India 192, **428–9**
Irregular or unlawful .. .. .. 187 (*e*), 191, **296**, **360**, *541*
Militia (*q.v.*).
Minors 189
Negroes and inhabitants of Protectorates 190, **358**
Oath of allegiance 188, **346**
Offences in relation to 191, **295-6**, **360**, *541*
„ „ forms of charges for *541*, *554*
Pay, effect of acceptance of 188, **361**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Enlistment—*contd.*
Procedure on 188, **346–7, 357–8**
Proof of 188, **404**
Re-engagement (*q.v.*).
Reserve forces **345–6**, 626, 640
Secretary of State's powers as to terms of .. 184, **344–5, 357**
Shilling, acceptance of, on 187–8, **347**
Terms of original 184, 190, **344, 357**
„ variation of 187, **344**
Twice, in two corps, procedure and punishment .. 191, **280–1**
Voluntary, beginning of 156

Equipment, Ammunition, &c.
Damaging or losing, pay stopped for 33, 86, **386, 389**
Not to be seized for debt 208, **393**
Offences in respect of 33, **267–8, 288–9, 385, 398–9**, *538, 552–3*
Pawning, &c. **288–290**, *460, 538, 552*
Purchasing from soldiers, penalties **398–400**

Error.
In documents, amendment of **411**
In orders, &c., does not nullify **298, 411**
Not necessarily an offence **290, 293**
Of judgment, no liability for 132
Writ of 136

Escape.
Assisting to 90, 108, 113
From arrest, confinement, &c. 27, **288**, *538, 552*

Escort.
At trial 42, *504*
Resisting an **277**, *536*

Escuage 149, 154

Evidence.
Abstract of *458, 463*
Accomplice, of .. .. 67, 68 (*b*), 74, 76, 78
Accused, acts and declarations of, as 63
„ admissions by 73
„ by, against another accused person.. .. *462, 494, 504*
„ death or illness of, as to *499*
„ for, court may adjourn for production of *498*
„ in mitigation of punishment *475, 476, 478*
„ in support of plea in bar *475*
„ „ „ to jurisdiction 44, *473, 474*
„ making statement, cannot give *509, 510*
„ omission by, to give, Judge-Advocate may comment on *480*
„ „ „ prosecutor may not comment on 45, *479, 493–4*
„ summary of, entitled to 31, *456, 461, 515*
„ to be taken down in presence of accused .. 30, *454–6, 515*
Admissibility of 56, 59-73, **405**, *500*
Army Act, provisions of, relating to **379, 404–7**
„ circulars, orders, &c., admissible as **405**
Banker's book, entries in, as .. .. 70 (*d*)
Best obtainable .. .. 59, 63–68, 71 (*a*), 80
Burden of proof (*see* Proof *below*).
Character of accused, as to 59, 60, 62, 78, *483, 484, 504*
Circumstantial, and direct, distinction between 55, 65–66
„ good and bad, illustration of difference between 6
Civil conviction or acquittal, of **406**, *484*
„ courts, rules of, to be followed 1, 3, 56, **379**, *501*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Evidence—*contd.*
Confession—
Accomplice, by .. .. 68 (*b*), 74
Definition of .. .. 73 (*a*), 74
Involuntary, facts discovered through, when admissible as 75
„ under threat, &c. 74
Rules as to 74–5
Secrecy, under promise of 75
Voluntary 74, 75
Whole confession must be given 75
Conspiracy, in case of .. .. 62–3, 74 (*a*)
Convictions, of previous 78, *504*
Court, duty as to rules of 71
„ of inquiry (*q.v.*)
Criminal Evidence Act, 1898 .. .. .. 75, **379**, *501*, *504*
Deceased person, declaration by, as 70
Depositions admissible as 70
Descriptive return as **405**
Direct (*see* Circumstantial *above*).
Discrepancy in 47, 71
Disposition, general, of, not admissible 60, 78
Documentary, rules as to 63, *478*
Documents (*q.v.*).
Dying declarations, admissible only in murder and manslaughter 68
„ „ rules as to admissibility of 68–9
„ „ „ illustration of 69
Embezzlement, of 102
Exclusion of 56, 59
Expert, rules as to 72
Facts, as to (*see* Res gestæ *below*).
False, before court of inquiry 75, 79, **293**
„ offence and penalty **293**, *540*, *554*
Feelings, bodily or mental, statements as to, admissible as .. 70
Government publications as 65, **404–5**, **424**
Handwriting, as to 72
Hearsay, admissible in certain cases 68
„ application to public documents 71
„ definition 68
„ inadmissible 59, 62, 68, 73
„ *res gestæ* statements 68, 69
Identity of persons named in document, of **406**
Indian Evidence Act, 1872 .. .. **378**
Indirect (*see* Circumstantial *above*).
Insufficient, charge dismissed on 28, 29, 40, *454*, *455*, *462*
Intention, knowledge, &c., as to 61–62, 90–91
Introductory notes on 55–57
Judicial notice 57, 58, *501*
King's evidence 76
„ regulations, of **404**
Military knowledge, judicial notice taken of matters within 57
Militia, Army Act provisions applied to 645
Mode of giving 80–84
Motive 62
Narrative form, to be recorded in *510*, *511*
Nature of.. 55
Notes of, witness may not read 73
Oath, not on .. .. 77 (*a*), *469*
„ on, accused may demand 29, **309**, **311**, *454*
„ „ in court of inquiry *522*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Evidence—*contd.*

Offences, connected, of 60–61
„ of several, to be kept separate *456*
Officer, on charge against *457–8*
Opinion as to conduct as 61, 62, 72
„ not generally admissible as 59, 71–73
Oral, rule as to 70, 71, 77
Orders or warrants as **405**
Plea to jurisdiction 44, *473–4*
Preparation for offence 62
Presumption of innocence 46, 58
Prima facie, not sufficient 46
„ use of 62, 65
Primary, of documents 63, 64
Procedure, Rules of, provisions of, relating to *501–7*
Proceedings of court-martial admissible in **406–7**
„ „ of inquiry not admissible in .. 75, 79, *522*
Proclamations in Ireland .. .. 65 (*b*)
Proof, burden of, on person alleging fact 58–9
„ „ „ rules as to 46, 58–9
„ „ „ shifting 59
Prosecutor, by, rules as to giving *477–8*
Provocation, of. (*See* **Provocation**.)
Public records as 71
Questions to be entered on proceedings whether answered or not 80
Rape, special rule in case of 70
Read over to witness, to be 47, *454*, *505–6*
Rebutting 47, 59, *483–5*
Refreshing memory 73, 82
Regimental books, records in **405, 406**, *483*, *485*, *523*, *575*
Relevancy, rule of 59–63, *501*
Reserve forces, Army Act provisions applied to 629
Res gestæ, rule as to statements forming part of 68, 69, 71(*a*), 73(*a*)
Rules of —
Classification of 56, 59
Discretion of court as to enforcement of 83, 84, *509*
Meaning of 55
Special points requiring attention in 80
Secondary, of documents 63–4
Statement of accused, how differing from *510*
„ of facts, document may be evidence of .. .. 71 (*a*)
„ previous, cross-examination as to 83
„ rules as to (*see* Hearsay, *above*).
(*See* also Accused.)
Summary of, adjournment of case for taking down 30, *454–5*
„ copy of gratis, accused entitled to .. 31, *456*, *461*, *515*
„ how far admissible 70, 83,
„ Judge-Advocate General, to be submitted to.. *463*
„ memoranda as to *583*
„ president of court, to be submitted to.. 31, *463*, *464*, *472*
„ production before court.. .. .. .. 31, 41, *456*
„ taking, compulsory .. .. 44 (*f*)
„ „ mode of 30–31, *454–5*
„ to be considered by C.O. *456*
„ use of, at trial 31, 70, 83, *464*
„ „ in cross-examination 83
Summing up of, by Judge Advocate *514*
„ „ „ prosecutor 45, *478–9*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Evidence—*contd.*
Text books on 56
Verbal, not admissible as to bad character *484*
Warrants as **405**
Wife's. (*See* **Wife.**)
Witnesses, dissuading from giving 108
,, explanation by, of 47
,, to be read over to 47, *454*, *505–9*
Examination of Witnesses. (*See* **Witness.**)
Exemplary Manner (serving in), meaning of **403**
Experts, evidence by 72
Explosives, using with intent to cause injury 97, 113
Extension of Service 184–5, **344–5**
Extortion, offences of 103, 113

F.

Fact, ignorance of, as excuse for offence 89
False. *See* **Attestation, Documents, Evidence, Statements,** &c.
False Accusations.
By accused 50, **291**, *494*, *539*, *553*
,, officer or soldier **291**, **301**, **302**, *539*, *553*
Conspiring to make 108
False Answers on attestation. (*See* **Attestation.**)
False Pretences.
Cheating in connection with 104, 114
Conviction for theft on charge of 103
Obtaining goods under 102–3, 114
Theft and, distinction between 100, 102, 103
False Reports, spreading, on active service **269**, **270**, *534*
False Swearing, &c. (*See* **Perjury.**)
Featherstone Riot .. .. 214 (*c*), 217 (*d*), 220
Fees.
For attestation **347**
,, certificate of acquittal or conviction **406**
,, descriptive return of deserter **397**
,, warrant for impressment of carriages **368**
Feigning Sickness **284–5**, *537*, *550*
Felony.
Concealment of a 108
Consequences following conviction for 87
Meaning of **392**
Regimental Debts Act, modification in case of .. 675, 682, 684
Table of 109–118
Fencibles 175, 193
Ferries in Scotland, payment for 182, **392**
Field Punishment.
Active service, on, by C.O. 32, **309**, **310**, *598*
,, ,, ,, C.M. 24, 39, **303**, **306**, **316**, *548*, *551*, *577*, *598*
Commutation of other punishments to **304**, **306**
Conditions essential to legality of **306**
Forfeiture of pay for 32, **386**
Month in sentence of, means Calendar month **442**, *528*, *577* (*a*)
N.C.O. cannot be awarded by C.O. 32
,, involves reduction to ranks in case of .. **432–3**, *577*
Provost Marshal's powers as regards soldiers undergoing 34, **342–3**
Rules as to 24, **303**, **304**, **306**, *598–9*
Substituted for summary punishment .. .. .. 24 (*c*)

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Finance, Army, history of 159
Finding and Sentence.
Confirmation and Confirming Officer (*q.v.*).
Finding—
Acquittal 36, 48, 49, **320–3**, *476*, *483*, *500*, *518*
,, honourable, when correct 48, *481–2*
Alternative charges, on *476*, *481*, *482*, *489*
Confirming authority, reference to, before.. .. 48, *481–2*, *573*
Consideration of 45, 46, 48, *480–1*
Form of 48, 49, *481–3*, *573*
"Guilty" 48, 49, **324**, *481*, *483–5*, *494*
Insanity, special, as to .. .. .. 88 (*a*), **380**, *487*, *491*
Non-confirmation, effect of 36
"Not guilty" (*see* Acquittal *above*).
Plea in bar, as to 44, *475–6*
Procedure and rules 48, 49, *480*, *483*
Record and form of 48, 49, *481–3*
Revision of, not allowed when sentence alone sent back.. 52
Special, alternative charges 48, *481*, *482*, *489*, *490*
,, as to validity of plea *473*, *474*
,, form of special finding *482*, *573*
,, when particulars in charge not proved .. 57, *473*, *481*, *482*
Votes on, equality of **320**, *499*, *500*, *518*, *519*
Invalid without confirmation 51, **322**, *519*
Opinions of court to be taken separately .. 48, *480–1*, *499*, *500*
Proceedings subsequent to 49, 51–54, *486–491*
Promulgation of.. .. .. 49, **320**, *488*, *584*
Recommendation to Mercy (*q.v.*).
Reservation for confirmation **322**, *511–2*, *519*, *520*
Revision of, object of *487*
,, procedure, &c. .. 52, **321–3**, **340**, *487*, *490*, *520*, *578*
Sentence—
Accused's character considered before .. 59 (*d*), *478*, *483–4*, *506*
Army Act, must conform to.. .. .. **306**, *486*
Awarding, principles to be observed in 49, 51, 83-7
Character, effect of, on .. 59 (*d*), 60, *478–9*, *483*, *484*, *506*
Colony, passed in 53, 54, **323–5**, **327**, **381–2**
Commencement of **327**, **339**, *486–7*, *486*
Commutation of. (*See* **Punishment.**)
Completion of, though offender no longer under military law **401**
Execution of, abroad, by Provost Marshal.. .. 33–4, **342**
,, illegal or irregular 130, 143–145
,, provisions as to 53–54, **325–339**
,, rules as to, power to make **340**, **423**
,, suspension of 53, **325**, **326**
Foreign country, passed in, how executed 53–54, **331**, **333**, **337**
Forms of 49, *576–8*
,, commitment of soldier awaiting.. .. .. *596–7*
Illegal, action for damages 128
,, nullity of *487*, *490*, *491*
Incorrect **306**
Increase of, not allowed on revision .. 52, **322**, **323**, *487*, *520*
India, passed in 53, 54, **323–5**, **327**, **381–2**
Lunacy, sentence not required where finding of .. **487**, **488**
Mitigation of. *See* **Punishment.**
New, required on revision of finding **323**
Not given till all charge sheets disposed of *495*, *496*
One, in respect of all charges 49, *485–6*, *494*, *496*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Finding and Sentence—*contd.*
Sentence—*contd.*
Preliminary procedure 49
Publication of, not a libel 139
Punishments (*q.v.*).
Remission of 53, **325–6, 400**
„ by discharging authority **334**
Rules of procedure as to **340**
Signature of president required 49, *486*
Valid for invalid, substitution of **340**, *489*
Vary, power of confirming authority to *490*
Votes on, equality of.. .. .. **320**
Ship, passed on board, execution of **435**, *607*
Validity of 51, 53, **322, 323, 340**, *486–491*
Fines.
Application of, when recovered summarily **408**
Awarded by C.O. or C.M. only for drunkenness .. 31, **305, 389**
Court of summary jurisdiction, special power of, when sitting in occasional court-house **407, 408**
Drunkenness, maximum for 31, **286, 305, 309**
Payment of part to informer **407, 408**
Power to reduce in India or colony **399, 409**
Recovery of, summarily **407–8**
Reserve forces, minimum in case of 629
Stoppages for purpose of paying 33, **387–389**
Volunteers, in case of 206, 661, 663
Flag.
White, displaying in presence of the enemy, charge for .. **299**
Flag of Truce, use of **268, 269**, *534*
Flogging. (*See* **Punishment, Corporal.**)
Followers. (*See* **Camp Followers.**)
Forage, purchasing from soldier **398**
Force, use of, responsibility and justification for 4, 5, 92–94, 214–221
Forces of the Crown (Military)—
Auxiliary forces 200–7
British forces 193–207
Colonial forces 192–3
Commissions for raising 150–2
Constitution of 192–207
Definition of **437, 441**
History of 146–183
Indian forces 192, **437**
Numbers (*q.v.*).
Penalties in relation to **395–400**
Persons not belonging to the Forces (*q.v.*).
Regulation of the Forces Act, 1871, extracts from 617
Reserve forces 195–199
Royal Marines 199, 200
Foreign Country.
Definition of term **439, 442**
Execution of sentences in 53–54, **331, 333, 337**
Mutiny Acts, &c., in 13, 14
Offences against person or property in .. 39, **270, 272, 316**, *516*
Foreign Troops, excluded from United Kingdom 156, 189
Foreigners. (*See* **Aliens.**)
Forfeiture.
Military decoration **285, 304, 306**, *484–5*
Pay (*q.v.*).
Rank, seniority of 32, **303, 305, 432**, *485, 576, 578*

[[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Forfeiture—*contd.*
Remission of punishment does not cover automatic .. *491*
Reservist, in case of offence by 628
Service (*q.v.*).
Forgery.
Definition of, and punishment.. .. .. 105, 114
Form of charge *556*
Notes, &c., possession of forged 106, 114
Route or requisition, of.. .. .. **374**
Uttering forged documents 105–6, 114
Forms.
In Rules of Procedure, deviations, &c., from, not to invalidate *528*
„ „ power to append notes to *528*
Of charges, directions as to use of *529–532, 583–4*
„ examples of .. .. .. 57 (*c*), *532–542, 543–557*
Fraud.
Conspiring to defraud 104, 111
Obliterating marks on public stores 105, 111
Offence of a fraudulent nature.. .. .. **285, 286**, *537, 551*
Securities, &c., obtaining execution of 104, 111
Fraudulent Enlistment. (*See* **Enlistment.**)
Fraudulent Misapplication of Regimental or Public Goods 21, **284**, *537, 549, 550*
Friend of Accused. (*See* **Accused.**)
Furlough.
Desertion while on 19
Extension—
False statement as to.. .. .. **291, 412**, *539*
Power of justices to grant **291, 412**
Recall from, after extension **412**
Fyrd-fare, liability to 146

G.

Galway.
Militia Act, application of, with respect to .. .. 648, 651 (*a*)
Garrison.
Abandoning, &c. **267–8**
Orders, &c., disobedience of **278**, *536, 547*
Gazette, admissible as evidence of rank, &c. 65, **405**
General Officer Commanding.
Competent military authority **342**, *525*
Complaints to be made to *524*
Power of delegation under court-martial warrants 39, **376**
„ to cancel award or reduce punishment 33 (*g*), 53, **319, 325**
„ to convene and confirm courts-martial 38, 39, 52, **374–6**
Prescribed officer for committing, commuting, &c. 53, *523*
Report to, on delay in assembly of court-martial .. **307–8**, *453*
Witness in colony *503*
General Service.
Court-martial cannot award, as punishment **351**
Enlistment for 186, **348**
Liability to, as commutation for punishment 186, 187, **305, 326, 350–1**
Geneva Convention, 1864 223–6
Geneva Convention, 1906 244–255
Gibraltar, former provision as to service of Militia in 636 (*a*), 653
Girls, offences against 95, 111

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Good Conduct Badges. (*See* **Military Decoration.**)
Good Conduct Pay, deduction from, and forfeiture of **390**, *491*
Good Friday.
Exclusion in reckoning time **308**, *453*, *528*
Inclusion in reckoning time **308**, *528*
Sitting of courts-martial on *497*
Good Order and Military Discipline. (*See* **Military Discipline.**)
Government Printer.
Documents printed by, as evidence 65, **404–5**, **424**
Meaning of **405**
Governor, meaning as respects India or Colony **440**
Governor-General, meaning as respects India **439**
Grievances.
May reduce punishment 16
No justification for insubordination 16
(*See* also **Complaints.**)
Guard, abandoning, &c. **267**, **268**, **270**, *534*
Guard, Commander of, duties in respect of persons committed to his custody 27, 28, **287–8**, **307–8**
Guard Detention room, confinement in 27, *457*
Guardians of the Poor, assignment of pension to **390**
Guards.
N.C.Os. on permanent staff of volunteers 207
Regiments of 193
Guernsey, G.O.C. in, court-martial warrants issued to .. 38
Guilt, presumption of 46
"**Guilty,**" "**Not Guilty.**" (*See* **Plea, Finding.**)

H.

Habeas Corpus, Writ of.
Prisoner, for bringing up as witness **330**
Remedy against illegal custody 120, 124, **377**
Rules as to grant of 124–8
Hague Convention, 1899, regulations annexed to 228–244
Half-castes in Indian Forces reckoned as Europeans .. **428**
Handwriting, expert evidence of 72
Hard Labour.
Certificate as to ability to undergo *605*
Imprisonment with, by C.M. **292**, **302**, **303**, **304**, *518*
„ „ on summary conviction.. .. .. **396**
Military convict or prisoner or soldier subject to .. **329**, **332**, **334**
Haverfordwest, application of Militia Acts to 647
Hearsay. (*See* **Evidence.**)
Homicide.
Different kinds 98–100
Justification for 93, 98
Hong Kong and Singapore R.A. Battalions .. .. 193 (*a*)
Honourable Artillery Company.
Included in term Volunteers **438**
History and position of.. .. .. 151, 155, 205
Volunteer Act not to apply to 665
Horse.
Making away with, ill-treating, &c. **288–290**, *538–9*
Meaning of, in Army Act **371**, **441**
Hospitals, stoppages for days in 32, **386**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

House.
Breaking and entering 104, 111
„ into, in search of plunder **270**, *535*, *545*
„ out of, after committing felony 104, 115
"Dwelling house," definition .. .. 103 (*c*)
Husband and Wife, communications between, privileged 79, *504*
(*See also* **Witness.**)

I.

Identification of Persons and Things 82
Identity Certificate, taking as security **400**
Identity, Evidence of, of accused and person named in document **406**
Ignominy. Discharge with. (*See* **Discharge.**)
Illegal Act, *bona fides* no excuse for 132
Impressment.
Carriages, &c.—
Auxiliary forces, provisions in case of .. .. 182 (*a*), **429**
"Carriage," meaning of **368**
Channel Islands, not authorized in **434**
Constables, exercise by, of power of 181
„ offences by. (*See* Police *below*.) **371–2**
Emergency, regulations as to supply in .. 180, 181, **369–371**
Fee for justice's warrant **368**
Forms of charges for offences in relation to *541*
Fraudulent claim in relation to **374**
History of 147, 180–2
Ireland, in 181
Isle of Man, not authorized in **434**
Justices, provisions as to 181, **367**, **370**, **446**
List of persons liable to supply **369**
Militia 181, **429**
Offences by civilians in relation to 181, **372**, **374**
„ constables in relation to **371–2**
„ officers and soldiers **294–5**, **372**, *541*
Orders for 181
Payment for, regulations as to **368–9**, **370**, **445–6**
Police, provisions as to 180–1, **367–72**, **373**
Purposes for which allowed **367**, **368**
Purveyance, Crown's right of 147, 177, 180
Refusal to furnish 181, **371**
Regulations as to 180–2, **367–374**, **445**
Routes for 179, 180–1, **367**
Scotland, in 181
Seize, power to, in certain cases 181, **371**
Tolls, vessels used in emergency exempt from **370**
Volunteers .. .. 182 (*a*), **429**
Warrants by justices **367**, **370**
Yeomanry .. .. 182 (*a*), **429**, **430**
Troops –
Criminals, &c., of .. .. 152, 156 (*f*)
Declared illegal 152
History of 150
Improperly impressed, discharge of .. .. .. 187 (*e*)
Imprisonment.
Alternative for award of penal servitude by civil court .. 109 (*b*)
Certificate of ability to undergo *605*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Imprisonment—*contd.*
Channel Islands, sentences of, in **434–5**
Classification of prisoners **384**
Colony, sentences of, in.. .. .. .. 53, 54, **333–7, 381–2**
Commanding officer cannot award **310, 337**
Commutation of.. .. 24, **303, 305, 306, 326, 327, 350–1**
Court of summary jurisdiction, special powers of, when sitting in occasional court-house **407, 408**
Day's, how calculated, for purposes of stoppages .. **388, 390**
Detention to be awarded instead of, for military offences 24, **305, 351**
Discharging authority **332, 334, 337**
Foreign countries, sentences passed in **333, 337**
Forms of orders, power to make rules as to **340**
Hard labour, with (*q.v.*).
Illegal, action for damages for 129
India, sentences in 53, 54, **333, 336, 380–2**
Isle of Man to be deemed colony for purposes of **434–5**
Military custody, may be undergone in 54, **332**
Month, in sentences of, means calendar month **442,** *528, 577* (*a*)
N.C.O., sentenced to, deemed to be reduced to ranks .. **432–3**
Offences punishable by **271, 274, 276–9, 280, 282, 285–298, 374**
Officer to be cashiered before being sentenced to .. **303, 306,** *576*
Pay stopped during 32, **386**
Place for execution of (*see also* **Prison and Detention Barrack**) 53-4, 130, **332–4, 384**
Regimental Court cannot award **312, 314, 334, 337**
Reserve forces, minimum term of 629
Rules as to .. .. 54 (*a*), **304, 332–8**
Sentence of, execution of 54, **332–8**
„ maximum which may be imposed by C.M. **303, 339**
„ summary, for contempt of court **292–3**
„ 12 months served in United Kingdom .. 53, 54, **381**
United Kingdom, in, provisions as to sentences of .. **304, 333, 335**
Warrants for, signature of **411**
Indecency, Acts of 97, 115, **285,** *537*
Indemnity, Act of, for protection of persons acting under martial law 5
Indenture, raising of mercenaries by 153
Indentured Labourers in India or Colony, claims of masters to 189, **350, 393, 443**
India.
Army Reserve officers (Indian), application of military law to **414, 418**
Articles of War (Indian), natives subject to .. 192, **414, 418, 420, 427–8**
Attestation in 188, **358, 428**
Authorised prison in **332, 334, 336, 384**
British, definition of **439**
Commander-in-Chief in, powers of .. 38, 52, 160 (*c*), **301, 325, 428–9, 432, 524, 525**
Committing authority in, prescribed officer for *523*
Commuting authority in **325**
Competent military authority in, prescribed officer for .. *524–5*
Complaint by soldier, procedure **301,** *524*
Court of inquest in, prescribed procedure for **383,** *524*
„ requests in, abolished.. .. .. .. **395**
„ summary jurisdiction, meaning of, as respects .. **441**
Courts-martial in, contempt of, by civilian **427, 428**
„ convening, &c., of 38, 52, **375–6, 427, 428,** *463, 690*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

India—*contd.*
Courts-martial in, delegation of power to confirm finding of 52
„ law of evidence applying to **378**
„ on Europeans and natives **428**
„ proceedings of, suspension of **427**
Currency equivalent declared by Governor-General **409**
Death by violence in pri-on **383**
„ sentence, approval of, by Governor-General .. 53, **322, 324**
Definition of term **439, 441**
Detention, sentences of, in 54, **336–7, 381**
Discharging authority, in **329, 330, 337,** *524*
Enlistment and attestation for special services **428**
„ of European forces for Indian Army, not legal .. 192, **429**
Forces in—
India—
Army Act, modifications of, with respect to **427–9**
Commissions in 192
Constitution and regulations 192
Courts-martial, convening of, in respect of **427**
Europeans in, subject to British military law **428**
Hospital apprentices, application of Army Act to .. 192, **428**
Included in regular forces 192, **437**
Officer of, complaint by, against his C.O. **428, 429**
Governor-General of—
Meaning of **439**
Powers of, as to approval of death sentences and penal servitude 53, **322, 324**
„ „ attestation and enlistment for special services **428**
„ „ complaints **301**
„ „ courts-martial **375, 427**
„ „ fines **399, 409**
„ „ prisons **380–4**
„ „ reduction of warrant officers **428**
Imprisonment in 53, 54, **333, 336–8, 380–2**
Indian Evidence Act, 1872 .. .. **378**
Indictable offences, meaning of references to, as respects .. **428**
Inquest on death in military prison **383**
Lunacy of person undergoing sentence in **380**
Madras and Bombay Armies Act, 1893 .. .. **429, 433**
Medical service in, attestation and enlistment for **428**
Military law, application of, to Indian forces 192, **414, 418, 420–1, 427–9**
„ „ Indian, meaning of **427**
Misdemeanour, meaning of, as respects **446**
Native of, courts-martial on, convening of **428**
„ meaning of term .. .. .. 192 (*a*), **428, 439**
„ Regimental Debts Act not applicable to 675
„ subject to Indian Articles of War 192, **414, 428**
Oath, form of, for natives *472*
Officer obstructing civil court in **403**
Penal servitude (*q.v.*).
Prisons, provisions with respect to .. **332, 333, 336–7, 380–1, 383, 394**
Punishments in, power to commute **325**
Regimental Debts (*q.v.*).
Removing authority in **329–330, 336–7,** *523*
Royal Marines in, provisions as to **424**
Sentences of death and penal servitude in, approval of 53, **323, 324**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

India—*contd.*
Special service in, attestation and enlistment for **428**
Summary proceedings in, provisions as to **409, 441**
Supreme court, meaning of, as regards **440**
Volunteers in **421**
Warrant officers in, reduction of **428**
Information, Military, publishing **297**
Injuring Wilfully Public Property, &c... .. **288–9**, *460, 539*
Injurious Disclosures.. .. .. **297**, *542*
Injury, malicious, to property 107, 115
Inquest, Court of, in India **383–4**, *524*
Inquiry, Court of. (*See* **Court.**)
Insanity. (*See* **Lunacy.**)
Insubordination.
Disobedience to lawful commands (*q.v.*).
,, wilful, producing disease **285**
Grievances not a justification for 16
Language, violent, &c. (*See* **Language.**)
Mutiny (*q.v.*).
Offence of **277**
Reservist, by 621
Superior officer, provocation by 16, 61
Tendency to, previous offence not evidence of 60
Insurrection. (*See* **Riot.**)
Intelligence to enemy, communicating **268, 269**, *534*
Intention.
Crime, as element of 18, 19, 90–91, 94, 97, 100
Evidence of, when admissible 18, 61, 62, 90
Presumption of 19, 59, 91,
Intermediate custody of military convict **327, 329, 332**
Interpreter.
Appointment of 43, 47, *500*
Member of court not disqualified as 47
Oath, administration of, to 43, **319**, *500–1*
,, forms of, for *470, 518*
Objection to 43, *501*
Remarks on duty and employment of.. .. .. .. 48, *511*
Solemn declaration by, form of *471*
Invalided Soldier, transfer to reserve of 186, 191
Invasion, liability to serve in case of 163, 172
Investigation. (*See* **Charge.**)
Ireland.
Attestation in **358**
Billeting in 178, 179, **362**
Canteen licences, provisions as to **412**
Chief Secretary, powers as to appointment of lieutenants of counties 649
Civil power in, calling out army reserve in aid of 197, 621
Conveyance of troops in .. .. 614 (*a*), 615 (*a*)
Counties, places included in, for militia purposes 651
County court judge, meaning of, in **441**
Court of summary jurisdiction in, constitution of **407–8**
,, ,, meaning of, as regards .. **440–1**
Fines imposed in, application of **408**
Impressment of Carriages 181
Lieutenants of counties, appointment of 174, 648–9

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Ireland—*contd.*
Lord Lieutenant of, definition of **436**
,, powers of, as to—
appointment of lieutenants of counties 649
auxiliary forces 170, 174, 617, 634
calling out army reserve in aid of civil power **197, 621**
courts-martial **375**
militia 634
Lunatic soldiers discharged in, provisions as to **355–6**
Militia Act, application of, to 648–9
,, constables' duties with regard to notices 649
Mutiny Act extended to .. .. 12, 13 (*e*)
Prisons and prisoners in, special provisions as to **434**
Proclamations in, as evidence .. .. 65 (*b*)
Summary Jurisdiction Acts, meaning of, as regards .. **440**
Volunteers not raised in 207, 665
Yeomanry in 176, 177
Irons, use of, on prisoners 27, *598*
Isle of Man.
Army Act, modifications, &c., with respect to **434–5**
Billeting in **434**
Colony, when included in term **330, 334, 381, 434–5,** *527, 529,* 636 (*a*), 652–3
Court of summary jurisdiction, meaning of, as regards .. **441**
Detention, to be deemed colony for purposes of **434–5**
Impressment of carriages in, provisions not extended to .. **434**
Imprisonment, to be deemed colony for purposes of .. **434–5**
Militia in .. .. 168, **435**, 636 (*a*), 653
Mutiny Act extended to .. .. 13 (*e*)
Penal servitude, to be deemed colony for purposes of .. **434–5**
Regimental Debts Act, application of, to 676
Reserve Forces Act, application of, to 629
Rules of Procedure, application of, to *529*
Summary proceedings in, provisions as to **409, 441**
Volunteer Act applied to 665
Volunteers in **435**, 662, 663–4, 665
Isle of Wight.
Militia Act, application of, to 204, 647, 652
Volunteer Act, application of, to 665

J.

Jersey, G.O.C. in, court-martial warrants issued to 38
Jewish method of swearing.. .. .. *472*
Judge Advocate.
Absence of, adjournment of court on 41, *497, 498, 513*
Appointment of *513*
,, enquiry by court as to legality of 41, *467*
,, invalidity of *513*
Courts-martial, duties as to signature, &c., of proceedings 49, 51, *483, 486, 487, 491, 510, 511*
Death or illness of *513*
Disqualification for acting as **317**, *513*
Duties and powers of *480–1, 513–4*
Duty to accused *479, 492, 514*
Oath, administration of, to 43, **318–9**, *470*
Objection to, accused has no right of 43, *468*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Judge Advocate—*contd.*
Opinion of, to guide court *514*
Solemn declaration by, form of *471*
Substitute on death, illness, or absence of *513*
Summing up by 45–6, *480*, *498*, *510*, *514*, *572*
Witness for defence but not for prosecution, competent .. **317**, *502*
Witnesses, summoning of, by *502*
„ examination of, by 47, *505*, *506*, *514*
Judge Advocate General.
Charge and summary, in case of general court, to be submitted to *463*
Judge Advocate, application for appointment of, in case of general court to be made to *513*
History of office 160
Proceedings, copy of, certified by, as evidence **406–7**
„ preservation of, by **406**, *512*
Royal Marines, in case of, Admiralty substituted for .. **424**, *512*
Judicial Notice
Articles of War, of 24, **339**
List of matters of which to be taken 57, 58, *501*
Rules of procedure, of **340**
Jurisdiction.
Acting without, or in excess of—
Act done made void by 120
Actions for damages in respect of 120, 128–141
„ „ time limit for bringing .. 144, **410**, 646
Amenability of C.-M. and officers to civil courts for .. 3, 119–145
Criminal proceedings, liability to, in respect of .. 120, 141–144
Meaning of 119, 120, 139, 141, 144
Jury, exemption of soldiers and certain officers from serving on 209, **395**
Justice.
Miscarriage of, rules for preventing *490*, *491*, *513*
Obstruction of 108, 116
Justices.
Attestation, persons specifically authorised to act for purposes of, as.. .. 188, 191 (*f*), **357**, **358**, *636*
„ proceedings before 187–9, **346–7**, **357–8**
Billeting and impressment of carriages, powers and duties with respect to, of **365**, **367**, **370**, **373**, **444–6**
Canteen licences, grant of, by **412**
Furlough, extension of, by **291**, **412**
Militia Acts, protection of, when acting under 646
Oath of allegiance of militiamen, administration of, by .. 637
Responsibility of, when troops employed to aid civil power 219–221

K.

Kilkenny, repeal of Schedule of Militia Act, with respect to.. 651 (*a*)
King, The.
Confirmation by, of certain sentences on officer, required .. 52
Mitigation by, of punishment 53
Reports to, of complaint by officer **301**
Traitorous or disloyal words regarding **297**, *542*
Warrants (*q.v.*).
King's Evidence 76
King's Regulations, copies of, as evidence 65, **404–5**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Kit.
Apprentice or deserter, of, disposal of 683
Clothing, &c. (*q.v.*).
Deficiency in, of absentee **341**
Obtaining free, by fraudulent enlistment **281**, *532*, *548*

L.

Lance-corporal, loss of rank of **433**
Language.
Abusive, when drunk 22
Insubordinate, charge for using, form of 17, *536*
„ offence of, what constitutes, and punishment 51, **274**, **275**
„ special finding where doubt as to commission of offence of using *482*
Malicious, evidence of previous offences admissible on charge for 61
Opinion of witness as to, admissibility in evidence 72
Threatening, contempt of C.-M. by using **202**, **378**
„ or insulting, by Reserve men 621
„ to superior officer 22, 51, **274-5**, *546*
Violent, on duty, actionable 134
Lascars, enlistment of 190
Law, ignorance of, no defence to criminal charge 88
Lawful command. (*See* **Command.**)
Laws and Customs of War.
Act of indemnity to cover action to prevent invasions, riots, &c. 5
Commanding officer's power to make and administer laws for conquered territory 2
Martial law, definition and application of 4
Nature and sources of the Laws of War 2
Occupied territory, rules as to. (*See* **Military Occupation.**)
Legal Adviser, communications to, privileged 79, 80
Letters.
From the front, &c., publication of **269**, **297**
Of administration 209, 676
Privileges to soldiers 209
Levy.
En masse .. .. 172 (*g*)
Feudal, history of 148-150, 154
General, history of 146-149, 151, 173
„ still exists 162
Libel, actions for, examples 137-140
„ publication of sentence of C.-M., not a 139
Licences.
For canteens, provisions as to **412**
For recreation rooms, not required **413**
Lieutenants of Counties.
Absence of, or inability to act 642
Appointment of .. .. 147 (*d*), 201, 642, 649
Auxiliary forces, jurisdiction as to, re-vested in Crown 170, 617, 634, 649, 651
Definition 619
Deputy, appointment, approval, and removal 201, 642, 649
„ list to be presented to Parliament 642
„ powers, duties, &c., of 642, 643, 649

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Lieutenants of Counties—*contd.*
Deputy, protection of, when acting under Militia Acts .. 646
„ qualifications for 643, 648–9
„ „ penalty for acting without .. 643
Militia Acts, protection when acting under 646
„ ballot, powers of, as to 634, 652
„ commissions in, recommendations for first 170, 202, 634–5, 652
„ powers of, over 169, 170, 634, 635, 637, 652
Militiamen, attestation of, before 635, 637
Powers, duties, &c. 170, 643, 649
Vice-Lieutenant, appointment and duties 642, 649
Volunteers, powers and duties with regard to, of .. 654, 657–661
Life certificate, taking as security **400**
Limerick, City of, application of Militia Act to 648
Liquor ration, stoppage of **387**
London, City of, application of Militia Acts to 647–8
„ „ Commissioners of Lieutenancy of .. 204, 619, 647
„ „ Court of Summary Jurisdiction in, constitution of **408**
„ „ militia, in .. .. 163 (*d*), 164 (*e*), 204, 647
„ „ trained bands, in .. .. 163 (*d*)
„ „ Trophy Tax .. .. 171 (*f*), 648
Lord Lieutenant of Ireland. (*See* **Ireland.**)
Lord Lieutenants of Counties. (*See* **Lieutenants.**)
Losing by neglect, equipments 33, **288–9**, **327**, **386–9**, *484*, *532*, *538*, *552–3*

Lunacy.
Crimnal responsibility in relation to 72, 88
Disposal of lunatic soldiers on discharge 190, **355–6**
Finding of, at trial, provisions in case of 88 (*a*), **379**, **380**, *472*, *491*
„ revision of *487*
Regimental Debts Act, modification of, in case of 675, 684
Removal to asylums of persons undergoing sentence .. **380**
Sentence, none, where finding of *487*, *488*

M.

Madras and Bombay Armies Act, 1893 .. .. **327**, **429**, **433**
Magistrate (*see* **Justices**).
Mahommedan method of swearing *472*
Maiming to avoid Service **284–5**, *537*, *550*
Making away with arms, &c. .. **288–9**, **398**, *484*, *538*, *552*
Malice.
Destroys privilege, in case of libel 139
In execution of sentence 144
Presumption of 59, 142
Malicious Arrest or Prosecution .. .. 120 (*b*), 133, 134–7
Malicious Injury 107, 115
Malicious Language, intention admissible as evidence on charge of 61
Malingering **284–5**, *537*, *550*
Malta Artillery, Royal.
Part of Regular Forces 193, **437**
Persons in, not to be sent to United Kingdom to serve sentence **381**
Man, definition of 629

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Manslaughter.
Definition and examples of 99
Dying declarations as evidence on trial for 68–9
Provocation may reduce homicide to 99
Punishment for 115, **299**, *542*
Trial for .. .. 208 (*b*), **300**
Marines. (*See* **Royal Marines.**)
Marriage.
False statement as to, on attestation **395**
Without consent of military authorities 208
Martial Law.
Act of Indemnity to cover action taken to restore order, peace, &c. 5
British possession, proclamation in, of .. .. .. 4 (*d*)
Explanation of expression 4–5
Military Law and, distinction between 4
Parliament alone can establish in British territory 4
Petition of Right, provisions of, as to 7, 152, 613
Proclamation of 4, 5
Punishments under, not permissible in peace .. .. 11 (*a*), **257**
Master, possession of servant, when possession of 101
(*See* **Apprentice** and **Indentured Labourer.**)
Mayor, officer disqualified from serving as 210, **395**
Medals. (*See* **Military Decoration.**)
Medical Expert, evidence by 72
Medical Men, communications to, not privileged 80
Medical Officer's Certificate, form of *605*
Mercenaries 148, 153, 154
Military Authority.
Abuse of 132–3
Competent (*q.v.*).
Military Convict.
Commitment, procedure for, and forms of *488*, *585–6*
Definition of **327**
Discharge by military authorities, before reaching penal servitude prison **328**
Disposal of .. .. 54 (*a*)
Hard labour, may be kept to **329**
Ireland, in, special provisions as to **434**
Removal of, for trial or as witness **329**, **330**
,, from India or Colony to United Kingdom, when required 53, **328–332**
,, from India or Colony to United Kingdom, when not required 54, **381**
Ship, on board **329**, **411**
(*See* also **Penal Servitude.**)
Military Courts.
Act of Indemnity for confirmation of sentences passed by .. 5
Civil Courts jurisdiction and powers. (*See* **Courts-Martial.**)
Courts-martial (*q.v.*).
Military Custody.
Between two periods of imprisonment, &c. **339**
Branch detention barracks included in term **333**
Civil prison or custody, transfer to, from **328**, **329**, **331**, **332**, **336**
Colony, in **333**, **336**
Confinement (*q.v.*).
Detention, sentence of, may be undergone in . .. 54, **332**, **333**
Escape from, attempting to **288**, *538*, *552*
,, ,, permitting 27, 91, **286–7**, *538*, *552*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Military Custody—*contd.*
Form of order for removal of deserter or absentee in .. *597*
Imprisonment, sentence of, may be undergone in .. 54, **332-3**
India, in **333, 335**
Meaning of 25, **307, 308**
Military convict may be kept temporarily in **328, 329, 331**
Militiamen, power to take into.. .. .. 639, 640
N.C.Os. in, placed under arrest 25
Not illegal through informality 127, **407, 411**
Offences in relation to persons in **286-8**, *538, 552*
Officers in, placed under arrest.. 25
Receiving and keeping in 27-28
Regulations as to taking into 25, 27, **306-9**
Release from, improper 27
Removal of persons under sentence in **329, 338**
Ship, on board, provisions as to **411, 435**, 606-7
Soldiers in, generally put in confinement 25, 27
„ „ on line of march, temporary confinement in civil prisons of 27, **382**, *596*
Volunteer, in case of **308**

Military Decoration.
Definition of **439**, *484*
Disposal of, on death 672
Evidence as to, on conviction *483-4*
Forfeiture of .. .. **285, 304-6**, *484-5, 577 (c)*
Making away with **288-9**, *539*
Purchasing from soldier.. .. .. **398**

Military Discipline.
Army Act, explanation of provisions of, as to .. 15-54, **257, 267**
Civil Courts, no cognisance of questions as to .. 119, 130, 132-3
Conduct to prejudice of .. 16, 23, 57 (*a*), **257, 298, 300**, *434-5, 542, 555*
Maintenance of 51, 86, **257**
Necessities of, suspension of rules of procedure on grounds of *515*
Ship, on board, order in council as to *605-7*

Military Exigencies.
Sittings of court, in case of *497, 498*
Suspension of rules, in case of *515, 517*

Military expert, evidence by 72

Military Funds (India), deductions from pay for arrears of subscription to 676

Military knowledge of Court or officer .. 57, 72, **271, 272, 274, 277, 283, 284, 286, 290**, *458, 501*

Military information, publishing **269, 297**

Military Law.
Amenability to, charge sheet to show.. .. .. *458, 529, 532*
Application to—
Auxiliary forces **416-7, 422, 429, 430**
Civilians **417, 418, 420, 433-4**, *458*
Colonial forces 192, **415, 417-422**
Indian Forces 192, **414, 418, 420-1, 427-9**
Militia 170-1, 203, **414, 416, 417, 419, 421, 422**
N.C.Os **415, 419**
Officers.. .. .. **413-5, 417-9**
Pensioners **415, 419, 420, 422**
Persons not belonging to His Majesty's forces .. **415, 417, 418, 420, 433-4**
Reserve forces 198, **415, 419, 421**
Royal Marines 200, **414, 415, 425**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Military Law—*contd.*
Application to—
Soldiers of regular forces **415**, **419**
Volunteers 207
Warrant officers **414**, **415**
Yeomanry 176, 205, **414**, **416**, **417**, **419**, **421**
Articles of war (*q.v.*).
Auxiliary forces, officers of, may sit on courts-martial if subject to **422**, *466*
Civil Law, and, adjustment of **403**
„ liability of soldier to, as well as to 85
Code of, necessitated by standing Army 10
Completion of sentence, though no longer under **401**
Courts-martial (*q.v.*)
Definition and object of 1, 6
History of 1, 6–14
Illegal enforcement of, in time of peace 7
India (*q.v.*)
Liability to, in respect of status 35, **401**, **422**, *533*
Martial law (*q.v.*)
„ „ and, distinction between 4
Military custody of persons subject to 25
Mutiny Act (*q.v.*)
Offences under 6, 12, 15–24
„ „ time limit for trial of 36, **401**, **402**, **422**, *475*
Persons not subject to, military courts no jurisdiction over 1, 4, 7, 119
Prosecutor in court-martial must be subject to .. .. 42 (*c*), *468*

Military Occupation.
Commanding officer's powers and position in 2
International agreement as to 2

Military Office, exercise of powers vested in holder of **410**, *527*, 627, 646

Military Policeman not superior officer of private **276**

Military Prison. (*See* **Prison.**)

Military Prisoner.
Active service on, rules as to punishment of **383**
Classification of, rules as to **384**
Commitment of, procedure for **334**, *488*, *587*
„ „ when sentenced abroad *526–7*
Definition of **332**
Discharge of **333**, **334**, *591*
Disposal of .. .. 54 (*a*)
Escape of **288**, **334**, *538*, *552*
Hard labour, may be kept to **332**
Imprisonment (*q.v.*).
Insane, provisions as to **380**
Ireland, in, special provisions as to **434**
Release of, improper **286–7**, *538*, *552*
Removal of, competent military authority for .. **337–8**, *523*
„ „ for trial, or as witness **333**, *592*
„ „ from India or colony, to serve sentence in U.K. 53, 54, **333**, **336**, **381–2**, *588–9*
„ „ „ prison for embarkation, form of order .. *594*
„ „ „ „ to another prison .. **332–3**, *526–7*, *595*
„ „ not allowed to prison or detention barrack outside U.K. **333**
„ „ to a public prison **333**, **334**
Rules as to punishment, &c., of **383**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Military Prisoner—*contd.*
Ship, on board, restraint and custody of **332**, **411**
Sick, conveyance to and from hospital of **332**
Treatment of **305**, **332**
Military Reward.
Assignment of, prohibited **390**
Definition **439**, *484*
Evidence as to, on conviction *483*
Forfeitures **304–6**, **386**
Personation in relation to **390**
Military Savings Banks. (*See* **Savings Banks.**)
Military Service.
Forms of charges in respect of offences *534–5*
Offences in respect of **267–273**
Militia.
Abroad (*see* Service *below*).
Absence without leave, court of inquiry as to, and record of 642
,, ,, form of charge for *557*
,, ,, inducing, &c. 640
,, ,, provisions as to offence of .. 204, 639–640
Acts 1662–1875, provisions of 163–175
,, 1882, provisions of 201, 633–652
,, Militia and Yeomanry Acts 1901 and 1902 653
,, protection of persons acting under 646
,, repeal of .. .. 649, 650, 651 (*a*)
Apprentices, claims of masters to 635
Arms, &c., storage of 171
Army Act, application of, to 203. **429**, **430**, 635
,, competition, between, and 156, 172
,, connection of, with .. .. .. 193 (*c*), 200, 201, **438**
,, enlistment into, from 164, 172, 203, 204, **280**, 636
Artillery, mobile, annual training .. .. .. 637 (*b*), 653
Attestation, persons specially authorised for purposes of .. 635–6
,, procedure for 201, 635, 637
Ballot, by, raising of 156, 164, 165, 166, 172, 173, 201
,, lord-lieutenant's powers as to 634, 652
Barracks, erection of 171
Billeting of 172, 180, **362–3**, **429**, **430**
Bounties .. .. 172, 173, 204 (*a*)
Bounty certificate, taking as security **400**
Charge sheet, framing of, where accused in .. *458*, *459*, *532*, *533*
Cinque Ports, separate county for purposes of .. 204, 647, 652
Civil courts, evidence of acquittal or conviction 645–6
,, ,, trial by 204, 636, 639, 640
,, rights and exemptions 644
Clothing 171
Command by regulars over, and by officer of 202, **341**
,, of 152, 169, 170
Commanding officer, summary dealing with militiaman, by 641, 645
Commissions in, nominations by lord lieutenants to first 170, 202, 634–5, 652
Competent military authority as respects recruits in .. 635
Constable of the Tower 652
Conveyance of, by railway 182, 614
Cork, City of, to be county for purposes of 648
Cornwall and Devon (Regiment of Miners). (*See* **Stannaries.**)
Corps, formation into 201
Cost of, former liability of county for 149, 171, 173
Counties, places included in 650

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Militia—*contd.*
County, definition of 647
„ enlistment to be for some 200, 635
Court-martial, for trial of member of—
Adjutant of corps qualified to sit on *466*
Militia officer if possible to be member of 37, 203, **317**, **422**, *466*
Trial by, liability to, of member of 35, 204, 636, 639, 640, 644, 645
Court of summary jurisdiction, trial by, liability to 204, 636, 639, 640, 641, 644, 645
„ „ „ „ sanction of C.O. required for .. 645 (*a*)
Crown's powers as to 169-170, 201, **341**, 634, 649
Death sentence for military offences, now only on active service 171
Definition of, in Army Act **438**
Definitions of terms in Militia Act 648
Desertion from, punishment for 171, 204, 639, 640, 641
Discharge from, provisions as to 204, 636
Discharged with disgrace, meaning of, in Militia Act .. 636
Discipline, orders with respect to 201, 634
Disembodiment, provisions as to 203, 638
Drogheda, application of Militia Act to .. .. .. 651 (*a*)
Dublin, City of, to be county for purposes of 648
Edinburgh, modification of Militia Act as to.. 648
Elections, right of militiamen to attend and vote at .. **430**, 644
Embodiment, failure to appear on 171, 204, 639, 641
„ Parliament to be summoned on .. 168, 203, 638
„ provisions as to 167, 203, 638
Enlistment in, after discharge with disgrace from other forces *556-7*, 636
„ appointment to counties 635
„ contrary to rules 636
„ mode of 201, 635
„ validity of 635
„ voluntary, provisions as to .. 165, 166-7, 201, 635-6
Evidence, provisions as to 635, 645-6
Exemptions of members of 204, **430**, 644
False answer on attestation 204, **281**, *557*, 635, 640, 645
Families of men embodied, relief of 172
Fines, provisions as to 644-5
Fraudulent enlistment, by member of—
Bounty, forfeiture of, on .. .. 204 (*a*)
Form of charge for *557*
From auxiliary or reserve forces, or navy 640
Into army 204, **280-1**
„ auxiliary or reserve forces, or navy 204, 640
Provisions as to 204, 639-642
Punishment for 204, **280**, 640, 641
General (or regular) as distinguished from local 201
Haverfordwest, power to appoint Lord Lieutenant for .. 647
History 152, 154, 162-175
Impressment of carriages for 181, **429**
Imprisonment, completion of sentence of, after expiration of training **462**
„ minimum fixed by Militia Acts 645
Instruction, calling up for 637
Ireland, application of Militia Acts to 648-9, 651
Isle of Man, colony for purposes of Army Act relating to **435**, 636 (*a*), 653

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Militia —*contd.*

Isle of Wight, application of Militia Acts to.. .. 204, 647, 652
Juries, exemption from service on, of officers of 209
Jurisdiction over, vested in Crown 634
Legal proceedings, provisions as to 644–5
Limerick, city of, to be county for purposes of 648
Local, account of 162, 173, 201
„ ballot, raising by 173, 652
„ commissions, appointment to 652
„ embodiment, meeting of Parliament on 173
„ jurisdiction of Crown as to 651–2
„ lieutenant of county, persons included in term .. 652
„ military law, subject to 173, **421**
„ notices, service of, on 651
„ numbers 173, 652
„ raising still possible, though in abeyance .. 162, 173, 201
„ returns in relation to 652
„ training of 173, 652
London, City of, special position of .. 163 (*d*), 164 (*e*), 204, 647
Lord-lieutenants. (*See* **Lieutenants of Counties.**)
Maintenance and government of, provisions as to 633–5
Military law, application of, to.. .. 170–1, 203, **414**, **416**, **417**, **419**, **421**, **422**
„ office, exercise of powers vested in holder of .. 646
Notices affecting, service, publication, &c. of.. 638, 639, 649, 651
Numbers, provisions as to 167, 201, 633, 634
Oath of allegiance of member of 637
Offences triable both by court-martial and summarily, provisions as to 645
„ trial of, time limit for, &c. 35, **401**, **402**, 644
Officers in, appointment, &c. 170, 202
„ commission as, does not vacate seat in Parliament **430**, 644
„ first appointments to lowest rank of 634, 652
„ property qualification of, abolished .. 169 (*e*), 170
„ qualified to sit on any court-martial .. 170, 203, **422**
„ rank of .. .. 170, 202 (*c*), 634
Orders and regulations as to, Crown's powers to make 201–4, 634, 649
Overseer, exemption from serving as 210
Parish, definition of, in Militia Act 648
„ officer, exemption from serving as **430**, 644
Parliament, orders and regulations to be laid before .. 644
„ right to record vote at election **430**, 644
„ seat in, not vacated by accepting commission in **430**, 644
„ to be summoned on embodiment .. 168, 173, 203, 638
Pay of, orders as to 171, 201, 634
Peace officer, exemption from serving as **430**, 644
Permanent staff of 202, **415**, **417**, **419**, **429**, 650
Quota, fine for not raising 166, 173
Quotas, provisions as to 149, 165–7, 173, 201, 644, 649
Raising and maintenance 165, 172, 633
Recruits in, appointed to serve for some county 200, 635
„ Army Act, application of, to 635
Recruiting, competition with Army 156, 172
„ unlawful 635
Re-engagement in 201, 635
Re-enlistment 169, 202
„ under Militia Act deemed enrolment for certain purposes 635
Regiment of Miners. (*See* **Stannaries.**)

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Militia—*contd.*
Reserve (*q.v.*).
Returns, how to be made 646
Riots, local militia may be called out for suppression of .. 173
Scotland, application of Militia Acts to 648
„ in, history of 174
Secretary of State's powers with respect to .. 172, 200, 201, 202, 203, 634, 638, 649
Service in, conditions of 167-8, 202-3, 636-9
„ „ liability of deserter, &c., to further 641
„ „ period of 168-9, 198, 201, 635
„ liability to serve in 162 3, 173, 203
„ of, abroad only under voluntary offer 168, 203, 636-7, 652-3
„ „ area of 168, 203, 636-7
„ volunteering to serve for a year at any time .. 636, 652-3
Sheriff, performance of duties of, during embodiment, where office held by officer of **430**, 644
Special localities, provisions as to 646-8
„ service section of, discontinued 203
Staff of, regulated by orders 202
„ permanent, of, subject to Army Act 202, **417**, **419**, **420**, **429**
Stannaries, Corps of Miners .. .. .. 164 (*e*), 204, 647, 652
Stoppages 644
Substitutes for balloted men, when allowed 165, 172, 173
Tower Hamlets no longer separate corps for .. 164 (*e*), 204 (*g*), 647
Trained bands developed into, under Stuarts 152, 154, 163
Training, absence from 171, 204, 639, 641
„ annual, notice of time and place 202, 638, 649
„ „ period of 167, 202, 637-8, 653
„ preliminary, of recruits 202, 637
Transfer to different corps 634, 650
Trophy money .. .. 171 (*f*)
Trophy Tax in city of London 648
Validity of attestation, &c. 635
Voluntary enlistment 165, 166, 201, 635-6
Yeomanry and, points of difference between 204
Minors, enlistment of 189
Misdemeanour.
Meaning as respects Scotland and India **440**
Soldiers not exempt from civil process for **392**
Misdemeanours, what offences are 109-118
Misprision by court 144
Mitigation of Sentences. (*See* **Punishments.**)
Month means Calendar month .. .. .. **442**, *528*, *577* (*a*)
Mule included in term Horse **441**
Municipal office.
Army Reservist, exemption from serving 622
Auxiliary Forces and **430**
Officers disqualified from holding 210, **395**
„ exempt from serving 209
Murder.
Attempt to 99, 116
Conspiracy to 100, 116
Court-martial, before, form of charge for *542*, *556*
„ jurisdiction of, in case of charge for 23, 85, **299**, **300**
Death caused by excessive or illegal punishment 141-4
„ sentence must be imposed by C.-M. for 51, **299**
Definition of 98-9
Dying declarations as evidence on trial for 68

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Murder—*contd.*
Evidence of character, intention, &c., on trial for 60, 61
India, in, approval required for death sentence for **323**
Letters threatening to 99, 116
Manslaughter (*q.v.*).
Prima facie presumption of, in case of killing 59, 98
Provocation as excuse 99
Speedy trial of charge of, special provisions for .. .. 208 (*b*)
Musters, commissions of .. .. 151–2, 162 (*c*)
Mutiny.
Charge of, forms of *535–6, 545–6*
,, framing 15, 16
Conspiring to cause, or joining in .. 16, 62, **273**, *462*, *535–6*, *546*
Definition of 15, 16
Evidence of another accused person 44
Grievances or provocation no justification for 16
Insubordination (*q.v.*) and, distinction between 15, 16
Punishment of, provisions as to.. 10, 12, 13, 15, 16, **273–4**, *535–6*, *545*
Suppress, obligation to use utmost endeavour to **273**
Trial may be at any time 35, **401**, **402**
Mutiny Act.
Channel Islands, extended to .. .. 13 (*e*)
Colonies and foreign countries, extended to 12–14
Courts-martial, power to constitute, given by 12, 13
Crown's powers under 12–14
First .. .. 6, 10, 11 (*b*)
History of 6, 10–14
Ireland, extended to .. .. 12, 13 (*e*)
Isle of Man, extended to .. .. 13 (*e*)
Offences and punishments under 10, 13
Replaced by Army Act .. .. 1 (*a*), 7, 14
Second 11
Succession of annual Acts till 1878 11–14

N.

National Defence Act, 1888, extract from, as to railways.. 619
Native Officers.
In Colony, confirmation of finding and sentence, on .. 52 (*e*), 602
In India, subject to Indian articles 192, **414**
Natives.
Enlistment of 190, **358**
Oath, form of, for **319**
Naval Discipline Act.
Application of, to forces when on board ship .. **434**, 605–6
,, ,, Royal Marines **425–6**
Insane persons, provisions as to, in **389**
Not affected by Army Act **434**
Naval Prison deemed a public prison as respects Marines .. **426**
Naval Prisoners may be imprisoned in detention barracks .. **334**
Navy.
Deserted from, false statement of having **291**, *539*
Dismissal with disgrace from—
enlisting in militia 636
,, regular forces 191, **295**, **296**
Evidence of service or discharge from **404**
Militia, entering from, and *vice versâ*.. .. .. .. 204, 640
Mutiny or sedition in 16, **273**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Necessity, when an excuse 88, **268**
Negligence, actions for 140
Negroes, enlistment of 190, **358**
Newspaper Correspondents.
Military law, application of, to **418**
(*See also* **Reporters**)
Night.
Disguised at, offence to be 113
Meaning of, in connection with burglary .. .. .. 103 (*d*)
N.C.Os.
Accounts of, supervision of, by superiors 21, **284**
Acting N.C.O. included in term N.C.O. **432, 437**
,, reversion of, to ranks 32, **432**
Admonish, power of company commander to 29
Army Act, special provisions of, as to.. .. .. .. **431-3**
Arrest, rules as to, in case of 25, 26
Auctioneer, employment as, under Regimental Debts Regulations 680
Charges against, commanding officer's power to deal with 21, 29, 32, **310, 312, 432**
,, investigation of 29, **308**
Civil court, report as to conviction by, of **404, 432**
Commanding officers' powers and restrictions as to punishing 21, 29, 32, **310, 311, 431**
Confinement of soldiers, duties in relation to, of .. .. 27 (*c*)
Court-martial, regimental, not usually tried by .. 35 (*c*), **313**
,, restrictions as to sentences by, on .. 49, **303, 432-3**
Definition of term **437**
Detention, sentenced to, deemed reduced to ranks **433-4**
Drunkenness of 21, 32, **431**
Extension, re-engagement and continuance of service .. 185, **352**
Field punishment cannot be awarded by C.O. to 32
Imprisonment, sentenced to, deemed reduced to ranks **432-3**, *577*
Military custody, when in, generally put under arrest .. 25
,, law, application of, to.. .. .. **415, 419, 431-3**
Minor punishments, not to be subjected to 32, **312**
Pay, detention of, by **297**
,, forfeiture of, cannot be awarded by C.O. to 32
Penal servitude, sentenced to, deemed reduced to ranks **432-3**, *577*
Punished more severely than private concerned in same offence 50
Rank, reduction in **303, 305, 404, 432-3**
,, seniority of, forfeiture of **303, 305, 432-3**, *485*
Ranks, reduction to, punishments involving **432-3**, *577*
Reprimand, cannot be sentenced to by C.-M... 49
,, of, by C.O. 29, 32, **310, 312**
Sentences on, forms of *577*
Service, extension of 185, **352**
Ship, trial by court-martial on board 36, 38, **313, 435**, *606-7, 609*
Soldier, striking or ill-treating a **297-8**, *542*
,, when included in expression **298, 310, 415, 437**
Summary punishment, not to be subjected to.. .. 21, 29, 32, **310**
Superior officer, when included in expression **437**
Notices.
Militia, affecting, provisions as to 639, 649, 651
Reserve forces, affecting, provisions as to 628
Numbers.
Auxiliary Forces 167, 201, 205, 206
Excess or deficiency not to affect operation of A. A. .. **258**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Numbers—*contd.*
Troops to be maintained, stated annually 156, **257, 258**
When reserve forces not included in 632, 653
Nuncupative Will 209

O.

Oath.
Administration of, procedure **318–9**, *472*
Affirmation included in term **440**
Allegiance, of 188, **346**, 637
Children of, admissible, though not on 96
Courts of inquiry, administration by **340**, **341**, *522*
Courts-martial, members and officers attending, for 43, **318–9**, **340**, *470–2*, *500*, *517*
,, taken by members of, effect of **319**
Definition of **440**, **442**
Documents admissible as evidence on **406**
Evidence cannot be on, before Court sworn *469*
,, on, right of accused to demand .. 29, **309**, **311**, *454*
False, respecting pay **390**
Indian method of swearing *472*
Interpreter, in case of, provisions as to 43, **319**, *470*, *500–1*, *518*
Jewish method of swearing *472*
Judge Advocate, in case of, provisions as to 43, **318**, *470*
Judicial enquiries, evidence in, must be on 56
Mahommedan method of swearing *472*
Master claiming apprentices, &c., form of **359**, **443**
Natives, administration to, of **319**
Prosecutor, required in case of *477–8*, *485*, *583*
Refusal to take **291**, **377**, *505*, *540*
Roman Catholic method of swearing *472*
Scottish method of swearing *471–2*
Shorthand writer in case of, provisions as to.. 43, **319**, *470*, *501*
Solemn declaration, substitution of, for 43, 47, 77, **319**, *454*, *470*, *471*, *472*, *505*
Witnesses, to, provisions as to .. 47, 77, **309**, **319**, *454*, *477*, *505*, *518*
Obedience, by inferior, duty and limits of 17, 129–30, 135–7, 142–3
Obstructing course of justice 108, 116
Occupation of enemy's territory. (*See* **Military Occupation.**)
Offence. (*See* under each offence.)
Accessory before and after fact to 90, 109, 110
Accidents, responsibility 91
Active service (*q.v.*).
Aggravated, dealt with by general court-martial 38
Aiding and abetting, punishment for **391**
Alternative not to be stated in same charge .. *458*, *459*, *530*, *532*
Assisting in, responsibility for 89
Attempt to commit, definition .. 23, 90, 95, 99, 100, 110, **299**
Charge (*q v.*).
Civil, generally no limitation of time for trial of *476*
,, law, against 20, **300**, *459*
,, (*See also* **Courts-Martial**, civil offences.)
Classification of 50
Cognate, conviction of one on charge of another 48, 57, **279**, **324**, *481*, *483*
,, (*See also* **Charges**, alternative.)
Committed abroad, trial of 12, 40, 143, **315–6**
Common intent, responsibility in case of, for 89

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Offence—*contd.*
Compulsory responsibility for 88
Consent to, responsibility 91, 94, 96
Dangerous acts done with criminal intent are 97
Disposition to, not admissible as evidence 60, 78
Doubt as to facts proved constituting.. .. .. 48, *481*, *482*
First, lenient treatment for 50
Foreign stations, on, removal for trial 40
Good order and discipline, offences against. (*See* **Military Discipline.**)
Habitual, increased punishment for 50, 88–89
Ignorance, through 87–8
Information as to, privilege of withholding 79
Instigating, responsibility for 89
Intention in relation to. (*See* **Intention.**)
Investigation of 25, 28-31
Joint, degrees of criminality in 50
Less, conviction for, on charge of greater .. 19, 57, **324**, *477*, *483*
Military, miscellaneous **297–9**, *542*
„ service, in respect of **267–273**, *534–5*
Militia (*q.v.*).
Minor.. .. .. 27, 29
„ charges for, when may be dropped 40
Motive for 62
Place of commission of, liability to military law in respect of 36, **402**
Preparation for 62
Prevalence of, increased punishment during 50, 86
Punishable by ordinary law .. 23, 85–118, **299–300**, **327**, *542*
Punishments (*q.v.*)
Repetition avoided by service abroad 186
Reserve 621–2, 625–6, 628–9
Same, re-trial for 35, **309**, **311**, **400**, **403**, **404**, *475*
Serious, trial of, by civil court 86
Several, evidence of one as proof of another 60, 62
Soldiers, by, forms of charges *530–1*
Substance of, must be proved 57, *477*
Tables of 87, 109–118
Time and place of, material in some cases 57
Officer.
Aliens not capable of being 190, **358**
Arrest—
Active service abroad, on 25
Court-martial cannot be demanded 26
Inferior may order superior into 26, **277**, **306**
Investigation should precede 25–28
Military custody includes arrest 25
Nature of, to be conveyed in writing 25
Order for, generally written 25
Release from, order for 26
Sword, deprived of, when under 25
Witness, attendance as, when under 25
Wrongful, remedy for 26
Billeting, in case of, to pay for food **258**
„ offences in relation to, by **293**, **366**
Cashiering of (*q.v.*)
Charge against, investigation into 28. *457–8*
„ „ „ of, by C.O... 25, 28, **308**, *453*, *457–8*
„ „ rules as to.. .. .. *530–4*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Officer—*contd.*
Citizen, position of officers and soldiers as .. 1, 85, 208-210, **401**
Civil courts, control over illegal acts of .. 3, 119-145, **493-4**
Commanding officer (*q.v.*).
Company directorships, restrictions as to holding of, by .. 210
Complaints, officer to whom made **301-2, 428**, *524*
Corps, appointment to 194, **405**
County council, eligible as member of 210, **395**
Court-martial, cannot demand when under arrest 26
„ composition of, on trial of .. 37, 41, **314, 315**, *466*
„ general, alone can try 35, 39, **314**, *516*
„ „ power to cancel, award, or reduce punishment.. .. .. 33 (g), **310**
„ officers attending for instruction, and in waiting at. (*See* **C.-M.** officers.)
Court of inquiry on charge against 28, *458*
Criminal proceedings against, for excessive punishment .. 141-5
Definition of, in Army Act **413, 437, 441**
Delegation of authority to another 29, **410**, *527*
Dismissal (*q.v.*)
Drunkenness of 21, **286**
„ on parade 26
Effects of deceased. (*See* **Regimental Debts.**)
Embezzlement and theft, prevention of, responsibility for 21
False accusation by **291**
Finding and sentence on, confirmation of 52, *601-2*
Full-pay service of, meaning of **414**
G.O.C. (*q.v.*).
Half pay, meaning of **414**
Horse of, exemption of, from former licence duty .. .. 209 (*d*)
Imprisonment, sentence of cashiering to precede sentence of **303, 306**, *576*
Improper conduct of, towards accused, inquiry into .. 31
Junior may order arrest of senior 26, **277, 306**
Juries, exempt from serving on 209
Jurisdiction, acting without or in excess of. (*See* **Jurisdiction.**)
King, The, right of appeal to **301**
Letters, privileges as to 209
Military custody means arrest in case of 25
„ knowledge of 57, 72, **272, 274, 277, 283, 284, 286, 290**
„ law, application of, to 1, **413-5, 417-9**
Militia (*q.v.*).
Native, application of military law to **414**
„ confirmation of finding and sentence, in case of 52 (*e*), *602*
Offices, public or municipal, exempt from serving 209, 210, **395**
Oppression by, abroad 143
Order of, no appeal from 119
Overseers, exempted from serving as 210
Parliament, right to sit as member of 210
„ „ vote at elections to 210
Pay of, penal deductions **385**
Pecuniary interest of, in recruiting under old system .. 157
Penal servitude, sentence of cashiering to precede sentence of **303, 306**, *576*
Persons subject to military law as **415, 417-8**
Provocation of subordinate by superior 16, 61
Punishment, scale of, for 23, **302-6**
"Qualified" for convening general court-martial **375**
Rank, forfeiture of seniority of **303**, *485, 576*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Officer—*contd.*
Rank of, evidence of Army List, &c., as to **405**
„ in Army 194
Rates, not personally exempt from 209
Redress of wrongs, procedure 26, **331**, **428**
Reflections against, by accused, proper course in case of .. *494*
Refusal by, to deliver up soldier to civil power 203, **298**, **403**, *542*
Reprimand, sentence of, on **303**, *576*
Reserve, military law, application of, to **413-4**, **418**
Resignation, no right of 194
Retired pay, meaning of **414**
Riots, responsibility when troops called out 219-221
Rules of Procedure, application of, to persons subject to military law as *528-9*
Scandalous conduct of 21, 23, 51, **283**, *537*, *549*
Sentence on, forms of *576*
Service with any part of army, liable to 194
Soldier, illtreating or striking a **297**
„ servants, licence duty not payable for, by . .. 209
Superior, definition of .. .. 17 (*a*), **275**, **437**
„ disobedience to .. 16, 17, 18, 22, **276-7**, *536*, *547*
„ may be ordered into arrest by junior .. 26, **277**, **306**
„ military policeman is not a **276**
„ provocation by 16, 61
„ striking or threatening .. 22, 51, **274-5**, *536*, *546*
Sword of, removed when put in arrest 25
Trial of, custody of, at.. 42
Volunteer (*q.v.*).
Waiting, at court-martial (*see* **Court-Martial**, Officers).
Warrant (*q.v.*).
Will of the Crown, hold office at .. .. 124 (*a*)
Wills of 209
Omission, acts of, responsibility for 94
Opinion.
As to guilt not to be stated by investigating officer 30
Counsel not to state, as to matter of fact *509*
Court of inquiry, of, as to returned prisoner of war .. *522*
Not generally admissible as evidence.. .. .. .. 59, 71-3
Of confirming officer, evidence of *521*
„ convening officer, statement and effect of **314-6**, *463*, *465-6*, *516*, *521*
„ Judge advocate as to point of law, Court to be guided by *514*
Opium, drunkenness includes intoxication from 21
Order and Discipline, offences against. (*See* **Military Discipline.**)
Orders, &c.
Admissible as evidence **405**
Army **405-6**
Delegation by military authority of power to issue **410-1**
Disobedience of garrison, &c. **278**, *536*, *547*
Errors in, do not invalidate 127, **411**
Execution of 17, 18, 92-3, 142-3
Officer, of, no appeal from 119
Provisions as to 127, **410-1**, *528*
(*See* also **Command.**)
Ordinances of War. (*See* **Articles of War.**)
Ordnance, Board of 159, 160-1
Overseers.
Exemptions from service as 250
Publication and service of notices by.. .. .. .. 628, 639

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

P.

Parish, definition of, in Militia Act 648
Parish Officer, exemption from service as **430**, 622, 642
Parliament.
Army, control over by Army (Annual) Act .. 1, 14, 155, 158-9, **257**
Assembly of, not required when Section A reserves called out 398, **354**, 631
,, on embodiment of militia .. 168, 173, 203, 638
,, when reserve forces called out 197–8, 624
Field punishment rules to be laid before **304**
Martial law established only by Act of 5
Members of, officers of auxiliary forces as **430**, 644, 655
,, right of officers and soldiers to sit as 210
Militia (*q.v.*)
Peers and M.Ps. not exempt from arrest 26
Prison rules to be laid before **383**
Vote at elections, right of officers, soldiers, &c., to 210, **430**
Parole, making known or giving, unlawfully **270–2**, *535*
Patriotic Fund, transfer to, of unappropriated residues of property 686-7
Pawnbrokers, purchasing stores, &c., from soldiers, liability of **343, 398–400**
Pawning Regimental Property, &c. .. **288–9, 343**, *539, 552*
Pay—
Acceptance of, without attestation, subject to military law 188, **361**
Assignment of, prohibited 208, **390**
Deductions from—
Absence without leave 32, **385–9**
Active service, on, by C.O. 32, **309, 311, 387, 389**
,, ,, ,, C.-M. **303, 306, 387, 389**
Actual loss, may not exceed **387, 389**
Authorised, only to be made.. .. .. .. **304, 306, 385**
Civil Court no jurisdiction to remedy 119
Commanding officer's power to order 31–3, **309, 310**, *387, 389*
Competent military authority, power of, to award .. **341**
Corps pay 49, *485*
Day, how reckoned for purposes of **387–8, 390**, *528*
Desertion, during 32, **342, 386, 388**
Detention, in case of 32, **386, 390**, *457*
Facts justifying, to be stated in particulars *459, 460, 484, 532*
Field punishment, in case of 32, **386**
Fines, of sums required to pay 33, **387-9**
Fraudulent enlistment, in case of **341–2, 388**
Hospital, while in **386**
Imprisonment, in case of 32, **386, 390**
Making good damage for 33, 86, **385, 386–9**, *460, 532, 576, 577*
Officers, of, penal **385**
Punishment not to be by way of **389**
Remission of 33, **389**
Ship, award of, on board **386**, *608*
Soldier, of, penal **305–6, 386–9**
Stolen property, in respect of **286, 344**
Sums ordered to be paid to wife or children .. **387, 394–5**
Wife's maintenance 208, **387, 389, 394–5**
Deferred, assignment of **390**
,, forfeiture of **304–5, 390**, *485*
Detaining unlawfully **297**, *542*
False oath or personation as to **390–1**
Full, meaning of.. .. .. **414**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Pay—*contd.*
Good conduct, forfeiture of **395, 390, 439,** *491*
Half, meaning of **414**
Inclusion in, of other sums for purposes of deductions **389, 390**
Issue of 159
Prisoners of war, soldier .. .. .. 33 (*b*), **386, 387**
Retired, meaning of **414**
Signing in blank of documents relating to **290**
Withholding of, in case of doubt **390**
Paymaster. (*See* **Regimental Debts.**)
Paymaster-General, duties of 159, 161
Pay Warrant. Provisions as to forfeitures and deductions **304, 306, 385, 387-389**

Penal Servitude.
Abroad, sentences of **327, 330,** *585-6*
Articles of war, restrictions on imposing by 24, **339**
Being at large during term of, penalty for 108, 113
Cashiering, sentence of, must precede sentence of .. **303, 306,** *576*
Channel Islands **434-5**
Colony (*q.v.*)
Committing authority abroad **331**
„ „ in India and colony **328, 330**
„ „ „ United Kingdom **328**
Commutation of **306, 326, 327**
Courts-martial—
District, cannot award .. .. 35, 86 (*c*), **314**
Field general, passed by, sentence of .. **316, 321,** *519, 520*
General, alone can award 35, **279, 314**
Regimental, cannot award .. .. .. 35, 86 (*c*), **312, 314**
Duration of sentence of, no restrictions as to **339**
Discharging authority, abroad **331**
„ „ in India and colony **329, 330, 331**
„ „ „ United Kingdom **328**
Effect of sentence of **327**
Field punishment, as commutation for **306**
Forms of commitment *585-6*
„ orders as respects, power to make rules as to .. **340**
India and colonies—
Approval of sentence of, required in 53, **323, 324**
Authorised prison in, meaning of **332**
Civil custody in, meaning of **329**
Intermediate custody **327, 329, 332**
Removing authority in **329, 330, 331**
Sentences passed in India or colony, where served 54, **327, 328, 330, 331, 381**
„ „ United Kingdom, where served .. **327**
Isle of Man, to be deemed colony for purposes of **434-5**
Military convict (*q.v.*).
Minimum term to be awarded by Civil Court or C.-M. 87, 100 (*b*), **302**
N.C.O. sentenced to, deemed to be reduced to ranks .. **432-3**
Offences on active service punishable by **269, 274, 276**
„ punishable by **279, 280, 284, 286, 299**
Orders relating to **340**
Prison, definition of "penal servitude" and "authorised" **331-2**
Releasing prisoner wilfully, punishable by 27
Sentence—
Confirmation and approval of 52, 53
Executed in United Kingdom, with exceptions .. 53, 54, **381**
Execution of 53-4, **394, 327-332**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Penalties, maximum for civil courts, table of 109–118
Pension.
Army reserve after being called out 628
Assignment of 208, **390**
Forfeiture of 87
„ „ service towards **394**, **396**, **424**, *577*
Pensioners.
Form of charge against *532*
Military law, application of, to **415**, **419**, **420**, **422**
Perjury.
By person not subject to military law **378**
Court-martial, when triable before 106, **293**
Definition, offence and punishment 106, 116
False oath with respect to pension, &c. **390**
„ swearing as to belief is 72
Witnesses requisite on trial for 67, 106
Personation, definition and punishment .. 107, 116, **391**, 622
Persons not belonging to the Forces (*See also* **Civilians.**)
Commanding officer, cannot be punished summarily by .. 29, **433**
„ „ who is, as respects 29, **433**
Courts-martial, trial by 35, **433**, **434**
Military law, application of, to 6, **415**, **417**, **418**, **420**, **433–4**
Offences by, punishment of **433**, **434**
Persons subject to Military Law as Soldiers **415–7**, **419**, **421**
Petition of Right (1627), extract from, &c. 7, 152, 177, 613
Pirates included in term "enemy" **439**
Plea.
Convening officer, reference to 44, *473*
Evidence in support of 44, *474*
"Guilty" and "Not Guilty," difference in procedure 36, 44, 45, 55, *475*
„ „ „ distinction between *474*
„ form of proceedings on *564–5*
„ memoranda on forms, &c. *583*
„ misunderstanding of plea *474*, *476*
„ procedure on *474–5*, *476–7*
In bar of trial, procedure on 44, *475–6*
Jurisdiction of court to, (*see* Special *below*).
"Not Guilty," finding 49
„ form of proceedings on *565–7*
„ memoranda on forms, &c. *583*
„ procedure on *474–5*, *477*
„ withdrawal of *477*
Refusal to make a 45
Special, to jurisdiction of court 44, *469*, *472*, *473–4*, *518*
Plunder.
Breaking into house in search of **270**, *545*
Leaving C.O. to go in search of **270**, **271**, *534*, *544*
Poison.
Illegal supply or use of 97, 109, 113
Police.
Assaulting **277**
Authority, definition of **441**
Constables (*q.v.*).
Provisions as to billeting and impressment of carriages
178–181, **294**, **366–374**, **444–6**
Policeman, Military, not superior officer of private .. **276**
Police Station, confinement in .. .. .. **382**, **397**, *596* (*b*)
Poor.
Assignment of pension to Guardians **390**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Poor—*contd.*
Overseers of, service of notices by, to Militiamen 639, 649
,, ,, ,, Reservists 628
"Posse Comitatus" 146
Post.
Drunkenness on 23, **271**, **272**, *531*, *535*
,, time to be stated in particulars of charge .. *531*
Leaving **270-1**, *534*
Shamefully abandoning, &c. **267-8**, *534*
Sleeping on 23, 60, **271**, *535*, *545*
Postage, privileges of soldiers as to 209
Posting a soldier, meaning of.. .. .. **348**
Post-Office employees. Transfer to reserve immediately on enlistment 630-1
Preferential charges. (*See* **Regimental Debts.**)
Prescribed.
General officer in case of complaints **301-2**, *524*
Meaning of, in Army Act **440**
Officer for committing, removing, &c., authority .. **335-8**, *523-4*
,, competent military authority *524-5*
President of Court-Martial.
Absence or death of **320**, *464*, *488*, *497-8*
Appointed by convening officer 37, **312**, **314-6**, *462-3*, *516*, *538*, *539*, *580*
Casting vote of **329**, *499*, *519*
Charge Sheet and Summary sent to and produced by 31, 41, *463*, *464*, *472*
Duties and responsibility of **320**, *492*, *502*
Duty to accused 44, *479*, *492-3*, *514*
New, appointment of 42, **318**, *464*, *469*
Objection to 42, **318**, *469*, *500*
Offences before C.-M. by civilian or counsel, certifying as to, by 129, **292**, **378-9**
Proceedings, custody and transmission of, by .. 49, 51, *510-1*
,, signing and transmission of, by 49, *483*, *486*, *487*, *491*, *511*
Qualifications for 37
Questions to be put to witnesses by *492*
Rank required for, in case of—
Court on board ship **312**, *462*
For district court 37, **314-5**, *463*, *467*
,, field general **316**
,, general court 37, **314-5**, **431**, *463*, *466*, *467*
,, regimental court.. .. .. 37, **312**, *462*
,, warrant officer, in trial of 37, **431**
Signature by, of sentence 49, *486*
Swearing of 43, *470*, *471*
Pretences. (*See* **False Pretences.**)
Printer, Government. (*See* **Government Printer.**)
Prison.
Abroad, removal of prisoners from one to another (table) .. *526-7*
Authorised, definitions of **332**, **336**
,, removal to and confinement in 54, **334**, **384**
Civil. (*See* "Public" *below.*)
Colonial, provisions as to **332**, **333**, **336**, **380-1**, **384**
Commitment, forms of *585-595*
Committal to wrong, liability in case of 130
Confinement in, restrictions in case of India and Colonies.. **384**
Death by violence in military, in India **383**
Escape from **288**, *538*
Governor of, duty of, to receive prisoners **382**
,, powers of **343**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Prison—*contd.*
Indian, provisions as to.. **332, 333, 336-7, 380-1, 383, 384**
Ireland, in, special provisions as to **434**
Military, Admiralty cannot establish **426**
,, deemed a public prison **337, 382, 384**
,, definition of **333**
,, establishment and regulation of **382-4**
,, rules as to, to be submitted to Parliament .. **383**
Naval, deemed a public prison **426**
Offences committed in, punishment of **383**
Penal servitude, definition of **331**
Provisions, general, as to **380-2**
Public—
Establishment and regulation of **382, 384**
Meaning of, as respects India and colonies **336-7**
,, ,, United Kingdom **333, 335**
Secretary of State's powers **382-4**
Soldier confined in, treatment of **332**
Use of, for military prisoners 54, **332, 335**
Prison Acts, regulations under **383, 384**
Prisoner. (*See* **Accused, Detention, Military Convict, Military Custody, Military Prisoner.**)
Prisoners of War.
Aiding enemy, after being taken **268**, *534*
Court of inquiry on recovered *522*
Pay, deduction while .. .. 33 (*b*), **386, 387**
Taken, and failure to rejoin **269**, *534*
Privilege. (*See* **Malice** and **Witness.**)
Prize Money, deductions from **399**
Probate. (*See* **Will.**)
Procedure, Rules of. (*See* **Rules.**)
Proceedings of C.-M. (*See* **Courts-martial.**)
Process, civil (*q.v.*).
Proclamation of Martial Law. (*See* **Martial Law.**)
Procurator fiscal, powers of in summary proceedings .. **408-9**
Procuring. (*See* **Prostitute.**)
Professional communications, how far privileged .. 79-80
Prohibition, writ of 120-2
Promotion, trafficking in, penalty **398**
Proof, burden of. (*See* **Evidence.**)
Property.
Comrade's, improper possession of **299**
Damaging, &c., and stoppages for 33, **288-9, 385, 386-9**, *466, 484, 532, 538, 539, 552-3*
Deceased soldiers'. (*See* **Regimental Debts.**)
Destruction on active service **269, 270**, *535, 544*
Lost, possession and theft of 101
Malicious injury to 107, 115
Offences in relation to **288-296**, *460, 538, 552-3*
Regimental (*q v.*).
Stolen, ownership of, and restitution of 100 **344**
Unappropriated residues of, transfer to Patriotic Fund .. 686-7
Volunteer Corps, of. (*See* **Volunteers.**)
Prosecution.
Costs of, in treason or felony 87
Malicious .. .. 120 (*b*), 134-7
Procedure before Court-Martial *472*
Soldier not responsible for expenses of **388**

[[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Prosecutor.
Accused cannot object to *468*
„ may be identified by *485*
Address by 45, *477*, *478*, *492*, *494*
Appointment of .. .. 42 (*c*), *468*
Counsel on behalf of, rules as to 46, *507–8*
Court-martial finding and sentence, cannot confirm .. *468*, *519*, *520*
„ may be present at preliminary proceedings before 42
„ „ not be member of 37, **317**, *465*, *516*
Documents, production of, by *478*, *486*
„ to which entitled 31
Duty and rights of 45, *461*, *477*, *492–4*
Evidence, rules as to giving, by *477–8*, *485*, *508*
„ summing up of, by 45, *478–9*
Judge Advocate, cannot be **317**, *513*
„ „ opinion of, entitled to **314**
Military law, must be subject to .. .. .. 42 (*c*), *468*
Must not refer to irrelevant matter *493*
Reply of 45, *478*, *479*, *494*, *498*
Witness for defence, may be called as **317**, *502*
Witnesses, calling of, by 45, 47, *501–2*, *506*
„ of accused. Not entitled to list of 41, *502*
Prostitute, procuring to become 96, 116
Protectorate, British, included in term "Colony" .. **439**, **442**
Provocation.
Evidence of 61, *477*, *493*
Murder reduced to manslaughter by 99
Offences committed with or without, classification 50
Punishment may be mitigated by 16, **275**
Superior officer, by 16, 61
Provost Marshal.
Appointment of .. .. 33 (*k*), 151 (*i*), **342**
Arrests by 33, **342**
Custody of persons by 25, 27, 28, **287**, **307**
Duties and powers of 33, 34, **342**, **343**
Field general court, cannot be member of *516*
„ „ „ „ confirm finding and sentence of *519*, *520*
Impeding, offence of **270**, **272**, *535*
Release of prisoners by 28
Provost Prison. (*See* **Detention Barracks.**)
Provost-Serjeant 34
Public Authorities Protection Act, 1893 144 (*g*), 145, **410**, 646
Public Policy, privilege for reasons of 79
Punishments (*see under the various kinds*).
Active service offences, increase for, of 6, 23, **270–1**, **274–7**, *543*
Amount of, procedure as to fixing 49, 50, *499*
Articles of war, under 24, **339**
Commanding officer (*q v.*).
Commencement of **327**, **338–9**, *456–7*, *486*
Commutation—
Authorities for purposes of 53, **325–7**, *488–9*, *523*
Field punishment, into **306**
„ „ to rank next below detention for purpose of **304**
General service, to 186–7, **305**, **326**, **350–1**
Meaning of **326**
On partial confirmation of finding *488*
Partial, is illegal **326–7**
Principles governing exercise of power of .. .. .. 53 (*a*)

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Punishments—*contd.*

Consequences following conviction, in addition to 87
Corporal, discontinued 24, **303**, **383**, **384**
„ former powers to inflict 12, 13, 24
Courts-martial, awarded by, to be regarded by civil court .. **403–4**
„ „ by, scale and rules of.. 12, 13, 15, 23, 24, 35, 46, 49–51, 86–7, **300**, **302–6**, **312**, **314**, **315**, **316**, *518*
Degrees of, where several offenders 50
Difference of opinion of court as to, procedure *499*
Exceptional, in addition to sentence 49, *484*, *485*
Excessive, civil or criminal proceedings for 130, 141–4
„ confirming authority may vary sentence *490*
„ corps to see that award is not 51
Field punishment (*q.v.*).
Foreign ruler, under order of, prohibited **304**
Grievances, as bearing upon amount of 16
Increase of, during prevalence of crime 50, 86
„ for habitual offenders 50
„ not because of electing trial by district court .. 50
„ „ „ trial by general court 49–50
„ when not permissible 33, 52, **312**, *457*
„ „ permissible *490*
Limits of .. .. 49 (*h*), 83–7, **302–6**, **312**, **314–5**
Lower than maximum, power to award 23, **303**
Martial law, under, in peace time, illegal .. .. .. 11 (*a*)
Maximum .. .. 23, 27, 83, 109 (*a*), **304**
Minor, C.O.'s power to award 32, 33, **310**, **312**
Mitigation of—
Army Council, or general officer, by .. .. 33 (*g*), **310**
Authorities qualified to mitigate 53, **325–6**, *488–9*, *523*
Before confirmation 53, **326**, *520*
C.O.'s powers 33, **312**, *457*
Evidence, or statement by accused, in 44, *475*, *476*, *478*
Meaning of **326**
On partial confirmation *488–9*, *520*
„ passing valid in place of invalid sentence *489*
Principles governing exercise of power of .. .. .. 53 (*a*)
Nature and quantum of, majority of Court decides *499*
Object of.. 49
Offences, civil law, assigned by, power to award .. 86–87, **300**
„ table of 87, 100–118
Offender cannot be tried again after 33, **309**, **311**, *475*
Place of trial not to affect **402**
Prompt, reasons for 86
Provocation may be ground for mitigating 16, **275**
Record of, alteration of.. .. .. **310**
Remission of, authorities qualified to remit .. 53, **325–6**, *488–9*, *523*
„ does not extend to forfeitures *491*
„ meaning of **326**
„ to be granted before discharge **334**
„ when to be granted **400**
Ship, H.M.'s, description of summary punishments on board *608–9*
Signature of warrants relating to **411**
Summary, accused may elect C.-M. instead of 30, 33, **310**, **311**, *454*, *457*
„ bars retrial by C.-M. .. 33, 44, **309–311**, **403**, *455*
„ cancellation of **310**
„ C.O., award by, of 29–33, 38, **309–12**, *454–5*, *456*, *462*, *525*, 628–9
„ „ „ „ no appeal from 33

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Punishments—*contd.*
Summary, drunkenness, in case of 21, 29, 31, 32, **309–311**, **431**, *435*, *437*
„ field punishment (*q.v.*), substituted for term .. 24 (*c*)
„ legality of **306**
„ N.C.Os. or W.Os. not to be subjected to 29, 32, **310**, **431**
„ persons not belonging to forces not to be subjected to **433**
Time limit for award of **402**
Purporting, meaning of expression **406**
Purveyance, Crown's right of. (*See* **Impressment of Carriages.**)

Q.

Questions. (*See* **Witness.**)
Quotas under Militia Acts 149, 165–7, 173, 201, 644, 649

R.

Railroad, definition in Regulation of Forces Act 618
Railways.
Conveyance of troops by 182, 628
Government's power to take possession of in emergency 182–3, 618, 619–20
Statutes relating to, extracts from 614–7
Railwaymen, transfer of, to Reserve immediately on enlistment 630–1
Range, omission to give warning during firing at 94
Rank.
Acting, definition of **433**
„ removal from .. .. 32, **432–3**, 577 (*b*)
Army and Corps, in, may be different 194
Forfeiture of seniority of .. 32, **303**, **305**, **432**, *485*, *576*, *577*
Proof of, by Army List or Gazette **405**
Reduction in **303**, **305**, **404**, **428**, **431**, **432**, *577*
Ranks.
Leaving the, on active service **269**, *534*, *544*
Penal servitude or imprisonment of N.C.Os. involves reduction to the **432–3**
Quitting without urgent necessity **282**, *537*
Reduction to the 49, **303**, **431**, **432–3**
Rape.
Evidence in trial for, special rule as to 70
Offence and penalty 95, 116, **299**, *542*
When triable by court-martial.. .. .. 85, **300**
Rates, exemption from, where occupation by Crown 209
Ration, liquor, stoppage of, deduction from pay in case of .. **385**, **386**
Receiving stolen goods 104, 118, **285**, **343**, *537*, *551*
Recommendation to mercy 49, 51, **321**, *486*, *488*, *518*, *578*
Records. Entries in, admissible as evidence 71, **405**
Recreation Rooms may be used without licence **413**
Recruiter.
Duties of, on securing recruit **346**
Irregular enlistments by 191, **296**, *541*, 636
Regulations as to **357**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Recruiting.
Army and Militia, competition between .. 156, 164, 172, 636
Former methods of 157
Present methods of 157
Secretary of State's powers as to .. .. .. 157 (*h*), **357**
Unlawful 191, **295**, **360**, *541*
(*See* also **Enlistment.**)

Redress of Wrongs.
Civil court has no jurisdiction as to 119, 130, 132, **302**
Officer, in case of 26, **301**, **428**
Soldier, in case of **301–2**
(*See* also **Complaints.**)

Re-engagement.
Declaration on, admissible as evidence **404**
Error in, claim to discharge for **360–1**
N.C.Os., in case of 185, **352**
Privates, in case of 184, **351**
Reservists, in case of 197, 621
Secretary of State's power to make regulations as to .. 184, **351**
Warrant officers, in case of 185

Refusal to deliver up to Civil Power. (*See* **Civil Power.**)

Regiment of Miners. (*See* **Stannaries of Devon and Cornwall.**)

Regimental, meaning of in Army Act **489**

Regimental Books.
Confession of desertion, &c., to be entered in **342**
Declaration of court of inquiry as to absence of soldier to be entered in **341**, *523*
Records in, as evidence **405**, **406**, *483*, *485*, *575*

Regimental Conduct Book and Sheets. (*See* under **Conduct.**)

Regimental Debts—
Absence without leave, modification of Act in case of .. 675, 682
Act of 1893 669–686
„ commencement and extent of 676
„ forfeiture under **304**
Administration, letters of 676
Administrator-General in India, delivery of effects to, &c. 676, 678, 682
Administrator, official, duties 673
„ „ meaning as respects India 676
Apprentices, application of Act in case of 675, 682–3, 684
Assets, property when not 673
Casualty returns 681
Charges, preferential, decision of questions as to 670
„ „ paid by representatives 670, 679
„ „ payment of 669, 670
„ „ unpaid, payment by Secretary of State 671
Claims against deceased (*see* Debts, *below*).
Committee of adjustment, composition, appointment, and assembly 677–8, 682
„ „ duties and powers of 669, 670, 673, 677–680, 682, 684
„ „ effects, delivery of, to Administrator-General, by 682
Creditor, position of 674
Debts, payment, &c., of .. 670, 671, 672, 675, 676, 678, 680, 683, 685
Definitions 676, 679
Desertion, modification of act in case of 675, 683–4

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Regimental Debts—*contd.*

Duty not payable where surplus or residue under £100 .. 673
„ surplus only liable to 670
Effects, collection of, on death 209, 669, 670
„ difficulty in realising in India 682
„ not money, disposal of 672
„ proceeds of sale 683
„ sale of, by auction, &c. 679–680
„ „ certificate of particulars 680, 681
„ unappropriated, transfer to Patriotic Fund .. 686–7
Felons, modification of Act in case of.. .. .. 675, 682, 684
Funeral expenses 670, 679
India, Administrator-General 676, 678, 682
„ application of Act to 673, 675–6, 678–686
„ „ „ natives 675
„ casualty returns from 681
„ death in, claims against deceased, payment of .. 676, 685
„ „ form of notice for publication as to disposal of effects 684–5
„ „ of person not a soldier 675–6, 684–5
„ deduction of arrears of subscription to military funds 676
„ duty not payable where surplus or residue under £100 673
„ inventory and account of property, procedure .. 678–9
„ payment of debts of deceased 680
„ Secretary of State for, provisions as to .. 676, 683–4
„ surplus, remittance of 680, 681
Intestacy, declaration of 674
Inventory of property, deposit and inspection of .. 674, 678, 680
„ preparation of 678, 679
Kit, disposal of 683
Lunatics, modification of Act in case of 675, 684
Medals and decorations, disposal of 672
Next-of-kin or representative, payment to 681–2
N.C.O.'s commission for selling effects by auction 680
Patriotic Fund, transfer to, of unappropriated residue of effects 686–7
Paymaster, Army, modification of Act in respect of 675, 676, 682
„ discharge of.. 673–4
„ disposal of surplus by 671, 673, 675–6, 680
Personal estate, definition of 670
„ „ sale to pay preferential charges, &c. .. 670, 672
Property when not assets 673
Regulations under Act.. .. .. 672–3, 677–687
Representation, definition of 676
„ when unnecessary 671–2, 673
Representative, saving for rights of 674
Residue, disposal of, by Secretary of State .. 671–2, 673, 682, 686–7
„ undisposed of, application of 672, 682, 686–7
Savings bank, regimental, sums deposited in.. 683
Secretary of State, discharge of 673–4
„ „ „ powers 670, 671–6, 682–4, 686–7
Securities, shares, &c., disposal of 679
Ship, assembly of committee where death on board .. 678
Soldiers' effects fund, Royal Warrant establishing 686–7
Surplus lodged with paymaster 671, 680
„ provisions as to disposal of 671, 673, 675, 676, 680, 681, 682, 684, 685–6
„ remittance of undisposed 671, 673

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Regimental Debts—*contd.*
Validity of payments, sales, &c., under Act 674
Will, original, deposit and inspection of 674, 681
Regimental Exchanges Act, 1875 .. .. .. **398**

Regimental Goods, theft and embezzlement of 20, 21, **283–5**, *537*

Regimental Necessaries.
Deficiency in, and injury to .. **288-9**, *460*, *532*, *538*, *539*, *552-3*
Purchasing from soldiers, penalties **398-400**
Stoppages for **386**
„ „ court-martial does not award.. .. .. *460*

Regimental Orders, notification in, of absence without leave .. .. 32 (*g*)

Regimental Savings Bank 210, **304**, **390**, 683

Regiments, territorial titles of, origin of .. .. .. 155 (*d*)

Regular Forces.
Auxiliary forces, when included in **422**, **434**
Constitution, &c., of 192–207
Definition **437**, **441**
Reserve forces, when included in **413**, **437**
Royal Marines included in **413**, **415**, **437**, **441**

Regulation of the Forces Act, 1871, extract from .. 617

Regulation of the Forces Act, 1881 „ „ .. 667

Religious Scruples no Excuse for Disobedience .. 18, **276**

Remand.
Absence of witness justifies a *453*
Evidence reduced to writing, in order to have *454*

Remission of Sentences. (*See* **Punishments.**)

Removal of Prisoner to place where Corps is serving **337–8**, *523*

Removing Authority.
For sentences of imprisonment and detention **333**, **335**, **336-7**, *523*
„ „ penal servitude **329**, **330**
Officers prescribed as *523*

Reporters.
Admission to, and conduct at courts-martial.. .. 48, 129 (*h*)
Newspaper correspondents (*q.v.*).
Shorthand writer (*q.v.*).

Reports.
False, spreading on active service **269**, **270**, *537*
Neglect to send **290-1**, *453*, *539*
To superior authority, how to be made *528*

Reprimand or Severe Reprimand.
In case of N.C.O., by C.O. 29, 32, **310**, **312**
„ „ „ cannot be sentenced to, by C.-M. .. 49
„ „ officer **302**, **305**

Res Gestæ, rule as to statements forming part of 68, 69, 71 (*a*), 73 (*a*)

Reserve Forces Acts.
Reserve Forces Act, 1882 620-630
„ „ 1890 630
„ „ 1899 .. .. 198 (*d*), 632
„ „ 1900 632
„ „ 1906 .. .. 198, 632-3
„ „ and Militia Act, 1898, 168, 198, **354**, **416**, 631, 652-3

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Reserve Forces.

(*a*) Army Reserve.
(*b*) Army and militia, general provisions.
(*c*) Militia Reserve.

(*a*) Army Reserve.

Abroad, permission to reside 198, **355**, 632, 633
Absence without leave 621–622
„ „ „ form of charge *557*
Army service, re-entry on.. .. .. .. 198-9, **345**
Calling out of, extent of liability to serve in case of 198, **354**, 624
„ „ non-attendance 621, 625
„ „ on permanent service 197, 198, **353–4**
Civil power, calling out in aid of, of 197, **419**, 621
Class I., composition, &c., of 195-7, 620–1
„ divisions of 195, 621, 632
„ liability, by agreement, for permanent service without proclamation 631
Class II., composition, &c., of 197, 621
„ service confined to United Kingdom 625
Constables, exempted from serving as 622
Court-martial, liability to trial by, 35, **415**, **421**, 621-2, 625, 628–9, 645
Court of summary jurisdiction, trial of offences by .. 622
Creation of 158
Discharge, certificate of 196, **357**
Enlistment abroad .. .. 198 (*d*), 632–3
„ by man of, reckoning of prior service .. **346**
„ procedure and term of service 197, 621, 626, 632
Exemption from serving in parochial offices .. 209–210, 622
„ „ tolls, &c. 182, 628
Insubordinate behaviour 621
Language, threatening, using to officer *557*, 621
Meaning of, in Part II. of Army Act **361**
Medical examination 198
Numbers 195, 620–1
Offences, evidence of 622
„ in presence of officer 622
Pay, offences in respect of, and evidence 621, 622
Pension of, on return from army service 628
Personation by **391**, 622
Re-engagement, procedure and term of service 197, 621
Regulations as to 195–199
„ non-compliance with 621–2
Retention of reservists in time of war, in army service **353–4**, 624
Section A., calling out of without proclamation or meeting of Parliament 198, **354**
„ A., regulations as to 195, 196, 198
„ B., „ „ 196
„ C., abolished .. .. 195 (*d*)
„ D., regulations as to 196–7
Service, period and area of 195–7, 621, 624-5
„ term of 621
Supplemental, calling out of, on permanent service 195, 621, 632
Training, annual, period of 197, 624
„ with volunteers 631
Transfer to, after colour service 195, 196, **354–5**
„ before expiration of term of colour service 184, 191, 196, **344**, **354**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Reserve Forces—*contd.*

(*a*) Army Reserve—*contd.*

Transfer to, conveyance free to home on 191, **355**
„ if invalided or unfit to serve abroad .. 191, **354**
„ immediately on enlistment 630-1
„ reckoning of service, for 185, **345**
When not reckoned in number of forces 632

(*b*) Army and Militia (General provisions).

Absence without leave 625, 626
„ „ court of inquiry 627
„ „ definition 625
„ „ procuring commission of, offence of 626
„ „ record of 627
Appointment to military body, provision as to 627
Attestation on enlistment, provisions as to 626
Calling out on permanent service .. 197, 198, **354**, 624-5
„ „ „ failure to attend .. 625
Channel Islands, offences and punishments in 629
Charge sheet, framing of *458*, *532*
Commanding officer, summary punishment by 628-9
Conveyance by railway, &c., provisions as to 182, 628
Court of inquiry, provisions as to 627
„ summary jurisdiction, trial of offences by 625, 626, 628-9
Courts-martial, offences triable by 35, 625, 628-9
Definition for purposes of Army Act **437**, 630
Desertion, in case of 625, 626
„ inducing reservist to commit offence of .. 626
Enlistment, fraudulent, into Militia 640
„ in, provisions as to 626, 640
Evidence, provisions of Army Act as to, applied to .. 629
Exemption of, from serving as overseers 210
„ „ tolls, &c. 182, 628
Fines, minimum in 629
Forfeitures and stoppages 628
Identity or life certificate of reservist, taking as security **400**
Imprisonment, minimum term of 629
Military law, application of, to 199, **415**, **419**, **421**
Mutiny, inducing reservist to **273**
Notices, service and publication of, provisions as to .. 628
Numbers, when not included in forces 632, 653
Offences and punishments 621-2, 625-6, 628-9
„ by, time limit for trial of .. 35, **401**, **402**, 629
Orders and regulations as to, power to make 199, 627
Parliament, assembly of, when called out .. 197, 198, 624
„ „ „ „ exception .. 198, **354**
Personation of man in **391**
Powers vested in holder of military office, exercise of .. 627
Proclamation calling out 197-8, **354**, 624, 631
Regular forces, form part of, while under military law **413**, **437**
Service, false statement as to service in or discharge from **291**
„ when called out, period of 198, **354**, 624
Tolls, exemption from 182, 628
Training, failure to attend 625, 627
Transfer when called out, provisions as to .. 625, 627, 630

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Reserve Forces—*contd.*

(*c*) Militia Reserve.

Calling out of, effect on position in Militia 199, 623
,, ,, not in aid of civil power.. .. .. **415**
Discharge from 199, 623
Enlistment for, now stopped 195, 199
Establishment of, date of 158
Militiamen continue in position of, except when called out 199, 623
Numbers 622
Re-engagement in 623
Service, term of 623
Training, annual, period of, and attachment 199, 624

Reserve of Officers, application of military law to members of **414, 418**

Retirements from regular forces, trafficking in **398**

Riot, Insurrection, and Unlawful Assembly.
Act of indemnity to cover action taken to suppress . .. 5
Apprehension of rioters 215
Crimes incident to 213
Crown, powers of, in case of **4**
Deadly weapons, use of, in dispersing 215, 216, 219
Definition of 212
Dispersal of, before proclamation under Riot Act 217
Featherstone riot, enquiry on .. .. .. 214 (*c*), 217 (*d*), 220
Force, use of, in suppression of 214–220
Insurrection, definition of .. .. 211 (*a*), 212, 213
,, punishment for 213, 218
Magistrate's responsibility when troops employed 219–221
Militia may be called out to suppress 173, **419**
Officer's responsibility when troops employed 219–221
Reserve may be called out to suppress 197, **419**, 621
Riot Act, account of 216
,, proclamation under, form and effect of .. 216, 217 (*b*)
Riot, definition of .. .. 211 (*a*), 212
,, punishment for .. .. .. ,, .. 213, 216, 217, 218
Rioters and insurgents, included in term "enemy" .. 1, **439**
,, ,, subject only to civil law 1
Suppression of, duty of assisting in 146, 214, 216
Trained bands formerly used to suppress .. .. .. 151 (*z*)
Troops assisting civil power, position of 1, 208 (*a*), 218, 219, **419**, **420**
Unlawful assembly, definition of 211, 213
,, ,, punishment for 213, 218
Yeomanry may aid civil power to suppress 205, **420**

Robbery.
Assault, with intent to commit 103, 11
Definition, offence, and punishment 103, 11
Forms of charge for, before C.-M. *542*, *55*

Roman Catholic, method of swearing *472*

Route.
Billeting, is authority for 179–180, **362**, **365**
Falsification or forgery of **290**, **374**, *539*
Impressment of carriages, is authority for 179, 180–1, **367**
Order substituted for, in case of Auxiliary Forces 180, **429**
Railway, conveyance of troops by, is authority for 182, 614–7
Signing of 179–181

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Royal Marines.

Absence without leave **425**
Admiralty, exercise as respects, powers exercised by His Majesty as respects land forces .. 200, **423–4**
„ powers under Army Act 200, **257**, **422–7**
„ regulations included in term "King's Regulations" **424**
Army Act, modifications of, with respect to 4, 200, **422–7**
„ Annual Act, provisions of, as to **257**
Articles of war for, power of Admiralty to make **422**
Artillery, rank of 200
Colony, in, provisions as to **424**
Complaints by officers of **423**
Constitution of 199, 200
Corps, appointment to **424**
„ area, for purpose of Army Act **438**
Courts-martial, in case of, convening and confirmation of **422**, **423**, **426**
„ proceedings, transmission of.. .. .. *511*
Discharge, provisions as to 200, **404**, **424**
Enlistment of, provisions as to 200, **404**, **424**, **427**
Expenses of, included in Admiralty vote 200
Field punishment, rules as to *598–9*
Fraudulent enlistment by, forfeiture of service **425**
History of 199
India and colonies, provisions as to **424**
Infantry, rank of 200
Land, employment on, meaning of term **427**
"Man of the," persons included in term **426**
Military law, application of, to.. .. .. 4, 200, **414**, **415**
Naval Discipline Act, when subject to 200, **425**, **426**
„ prison deemed a public prison.. .. .. .. **426**
Numbers of .. .. 156 (*d*)
Pay of, orders as to **423**
Re-engagement of 200, **404**, **425**
Regular forces, when included in **413**, **415**, **437**, **441**
Reserve, enrolment in Class II of, of former 197, 621
„ transfer to, provisions of Army Act as to, not to apply to **424**, **427**
Rules, orders, &c., Admiralty powers to make .. 200, **423–4**
Service, forfeiture of 200, **424**, **425**, **427**
„ prolongation of 200, **424**
„ terms of 200, **424**
Ship, H.M., offences on board **425**
Transfer to and from regular forces 200, **424–5**
Warrants of Admiralty as to **422**, **423**, **424**

Royal Military College.

Commandant of, warrants for convening courts-martial issued to 38

Royal Warrants. (*See* **Warrants.**)

Rules of Procedure.

Application, extent of *529*
Army Act not to be inconsistent with.. .. .. .. **340**, *529*
Cases unprovided for in.. .. .. *528*
Channel Islands, application to *529*
Commencement of operation *529*
Construction of *528*
Crown, power of, to make **340**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Rules of Procedure—*contd.*
Forms in, deviations or omissions from, not to invalidate .. *528*
„ note as to use of forms of charges *529-533*
„ notes added by Army Council *528*
„ rules as to use of *528*
Isle of Man, application to *529*
Judicial notice of **340**
Meaning of expressions used in *528*
Military office, exercise of powers vested in holder of .. *527*
Parliament, to be laid before **340**
Suspension of, for military exigencies.. .. .. .. *515*
„ form of declaration *560*

S.

Safeguard, forcing a **270, 271**, *534, 544*
St. Petersburg, Declaration of, 1868 226-8
Savings Banks.
Military, establishment of 210
Regimental, deposits in.. 683
„ stoppages not to be deducted from **396**
Scandalous conduct of officer.. .. 21, 23, 51, **283**, *537, 549*
School of Gunnery, commandant of, warrants for convening courts-martial issued to 38
School, soldier absenting himself from.. .. .. .. **282**
Schoolmaster, Army.
Corps of 194
Included in term N.C.O., if not a Warrant Officer.. .. **437**
Punishment of 49, **432, 439**
Right of re-engagement 187
Scotland.
Attestation in **358**
Billeting in .. .. 178, 179 (*b*)
County court judge, meaning of, in **441**
Ferries in.. .. .. 182, **392**
Impressment of carriages in 181
Lunatic soldiers discharged in, provisions as to **355-6**
Militia Acts, application of, to.. 648
„ in.. .. .. 174, 203, 648
Misdemeanour, meaning of, as respects **440**
Oath, administration of, in *471-2*
Summary Jurisdiction Acts, meaning of, as regards.. .. **440**
„ „ Court, definition **441**
„ proceedings in **408-9**
Volunteers 662, 663-4
Scutage 149, 154
Seamen's and Soldiers' False Characters Act, 1906 191 (*b*), **360**
Search Warrants **399**
Secretary at War, history of office 159-160
Secretary of State, definition of term **436**
Secretary of State for War.
Admiralty substituted for, in case of Marines **423-4**
Certificate of conviction, transmission of, to . .. **367, 372, 403**
Delegation of duties of, in respect of Descriptive Return of Deserter **397**
History of office 160-1
Powers with regard to—
Active service **436**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Secretary of State for War—*contd.*
Powers with regard to—*contd.*
Deserters **397**
Enlistment .. .. 157(*h*), 184, **344-5, 357**
Field punishment 24, **303, 306**
Militia 172, 200, 201, 202, 203, 634, 638, 649
Pay, deductions from.. .. .. 33, **387, 389**
Prisons.. .. .. 54(*c*), **380-4**
Re-engagement 184, **351**
Regimental debts 670, 671-6, 682-4, 686-7
Reserve 184, 197, 198, **344**, 621, 624, 627
Restoration of forfeited service 185, **345-6**
Variation of period of service and enlistment 184, **344**
Volunteers 206, 654-660
Reports to the King to be made through **301**
Responsibility to Parliament and Crown 161, 162
Warrant authorising punishment, &c. **407, 412**

Securities.
Disposal of, under Regimental Debts Act 679
Inducing execution of, by force or fraud .. 103, 104, 113, 114

Sedition.
Charge of, framing 16, *535*
Civilians, by, tried by civil court **273**
Definition.. 16
Offence and punishment for 16, **273-4**

Seniority, forfeiture of. (*See* **Rank, Service.**)

Sentence. (*See* **Finding and Sentence.**)

Sentinel.
Misbehaviour of 57, **271, 272**, *535, 545*
Sleeping or drunkenness on post 23, 60, **271-2**, *535, 545*
,, ,, ,, evidence of previous offence not admissible on charge of 60
Striking or forcing a **270, 297**, *534, 544*

Servant.
Embezzlement by 101-2
Neglect or ill-treatment of 98, 117
Officer exempt from licence duty for soldier 209
Possession of master's property 101

Service.
Abroad, as a punishment 186
,, early history 148, 150
Army Service Act, 1847, provisions of, as to.. 158
Compulsory, abolished 156
Continuance in, after 21 years.. .. .. 184, **352**
Custom of the .. .. .. 2 (*c*), 134, **291, 410, 411**, *525, 527*
Death on, grants to widows, &c., from Patriotic Fund .. 687
Deputy, by 149
Documents, &c., relating to, admissible as evidence.. **404, 405**
Enforcement of, and penalties, in early times 153
Extension of 184, 185, **344-5**
False statement as to **291**
Forfeited, provisions as to .. 19, 185-6, 187, **304, 305, 342, 345-6, 351, 402-3, 424**
,, restoration of 185, **342, 345-6, 403**, *486*
General, commutation of punishment to 186-7, **305, 326, 350-1**
,, ,, ,, confirming authority cannot exercise power of .. **326**
,, enlistment for.. .. .. 186, **348**

Service—*contd.*
History of, in early times 146–150, 153
Military (*q.v.*).
Militia (*q.v.*).
Particulars of *574*
Period of 158, 184, 187, **344**, **357**
Prolongation in time of war or national danger 185, **352–4**, *485*, 624
Reckoning of 185, **342**, **345**
Records of, entries in 71, **310**, **351**, **405**, *483*
Reserve forces, of 198, 199, **354**, 621, 623, 624
Secretary of State, powers of, to vary terms of 184, **344**
Short, introduced 158
Transfer during. (*See* **Transfer.**)
Volunteers (*q.v.*).
Sexual Offences and Assaults 94–8, 109, 110, 111, 116
Sheriff.
Head of the shire levy 146–7
Militia officer as **430**, 644
Officer of auxiliary forces as **430**
„ regular forces exempted from serving as 210, **395**
Shilling, acceptance on enlistment 187–8, **347**
Ship.
Army Act, application of, to ships **435**
Auxiliary forces on board **434**
Court-martial, convening of, on board **435**
„ „ not held on board, except regimental court on N.C.O. 36, **313**, *607*
„ „ regimental, on N.C.O. on board .. 36, 38, **312–3**, **435**, *607*
Death on board, committee of adjustment on property .. 678
Discipline on board, Order in Council .. .. .. 34, 36 (*d*), *605–7*
Military custody of persons on board **329**, **332**, **411**, *606–7*
Naval Discipline Act, application of, to land forces on board **434**, *605–6*
Pay stopped for offences on board **386**, **387**, *608*
Royal Marines on board, provisions in Army Act as to .. **424–5**
Soldier in confinement on, turn of watch 27
„ on board *en route* for war considered on active service **436**
Summary punishment on board, table of *608–9*
Shoot, attempting to .. .. 95 (*a*), 100, 110
Shorthand Writer.
Oath, administration of, to 43, **319**, *470*, *501*
Objection to 43, *501*
Reporters (*q.v.*)
Solemn declaration by, form of *471*
Sickness.
Caused by offence, pay stopped during 32, **386**, **388**
Feigning **284–5**, *537*, *550*
Sieges, unwarrantable abandonment of **268**
Sleeping on Post, sentinel 23, 60, **271**, *535*, *545*
Smart Money, not now payable .. .. 187 (*f*), 188, **347**
Sodomy 97, 110, 117
Soldier.
Army Act, continues subject to, till transfer to reserve .. **355**
Arrest of, investigation should precede 25
Assizes, exclusion from towns during .. .. 210 (*h*)
Billeting (*q.v.*)
Charges against. (*See* **Charge.**)

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Soldier—*contd.*

Civil and military law, liability to, of 85, 208, **403**
,, employment of, restrictions as to 209, 210
,, offences by, under jurisdiction of civil courts **403-4**
,, power, position of, when employed in aid of 1, 208 (*a*), 218, 219, **419**
,, prison, may be confined in, when military accommodation not available 27
,, process, exemption from, of 208, **392-3**, **395**, **403**
Civilian, as, liability to military law **401**
,, status as, of 1, 85, 208-210, **401**
Commands, lawful, &c. (*See* **Command**.)
Complaints by, procedure **291**, **301-2**, **428**
Confinement (*q.v.*).
Corps, appointment to, on enlistment 186, 191, 194, **348-9**
Court-martial, district, right of trial by 29, 30–33, 50, **309-312**, *454*, *456*, *457*
Creditors of 208, **390**, **392**, 674
Criminal process, amenability to 208
Definition of term **437**, **441**
Disgraceful conduct of, offences and penalties 24, **284-6**, *537*, *549*, *550*
Domicile or settlement, cannot change while in service .. 208
Early methods of raising 152-3
Effects fund, Royal warrant 686-7
,, of. (*See* **Regimental Debts**.)
Elections, presence and voting at 210
Enlistment (*q.v.*).
Ill-treating a **297-8**, *542*
Irons, when to be used 27, *598*
Jury, exemption from serving on 209, **395**
Lunatic. (*See* **Lunacy**.)
Marriage, false representation as to, on attestation **395**
,, without consent of military authorities 208
Military custody in case of, means confinement 25, 27
,, law, application of, to **415**, **419-21**
N.C.O., when included in expression **298**, **310**, **415**, **437**
Obedience, duty and limits of 17, 129–130, 135–7
Offences (*q.v.*).
,, committed only by, rules as to charge for *530-1*
Pay (*q.v.*).
Pension, cannot assign 208, **390**
Persons subject to military law as **419–421**
Postage, privileges of, as to 209
Posting a, meaning of **348**
Prosecution, not liable for expenses of **388**
Punishments (*q.v.*).
Rates, not personally exempt from 209
Redress of wrongs **301-2**
Re-engagement of 184, **351**
Retention in service after expiration of term 185, **352-4**, *485*, 624
Rules of Procedure, application of, to persons subject to military law as *528–9*
Service (*q.v.*).
Ships, on (*q.v.*).
Tolls, exemption of, from 182, 209, **391-2**, 628
Transfer (*q.v.*).
Voting at elections, right of 210
Warrant officer, when included in term **431**, **437**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Soldier—*contd.*
Wife of. (*See* **Wife.**)
Wills (*q.v.*).
Witness before court of law, not exempt from attending as **393**
Stage Plays, licences unnecessary for recreation rooms .. **413**
Standing Army 10, 155, **257**
Stannaries of Devon and Cornwall (Regiment of Miners) .. .. 164 (*e*), 204, 647, 652
Warden of, included in term Lieutenant of County.. .. 619
State Affairs, evidence as to, privileged 79
Statement by Accused. (*See* **Accused.**)
Statements, False, offences in relation to **291**, *539*, *553*
Station beyond the seas, meaning of expression **439**
Statute Law defined **1**
Stealing—
Attempted 101
Bailee, by.. .. .. 101 (*a*)
Charges of, form and framing of 100, *542*, *556*
Civilians, from, dealt with by civil courts 20
Common law, things not subject of, at .. .. 100 (*b*), 103 (*a*)
Comrade, from 20, **285**, *537*, *551*
Definition of 20, 100, **284**
Dog, offence and penalty for .. .. 103 (*a*), 117
Embezzlement, acquittal on charge of, a bar to trial for .. 102
„ conviction of, on charge of stealing 48, 57, 102, **284**, **324**
Evidence on charge of 20, 60–1
False pretences, acquittal on charge of, a bar to trial for .. 103
„ and, distinction between 100, 102, 103
„ charge may be on same facts as on unsuccessful charge for.. 103
Improper possession of property of comrade.. .. .. **299**
Lost property, possession and theft of 101
Offences and penalties 117–8, **283–6**
Regimental or public goods 20, 21, **283–5**, *537*, *549*, *550*
Servant, by 101–2
Stolen property (*q.v.*).
Volunteer in camp, by, may be tried by civil court .. .. 20 (*a*)
Stolen Property.
Pawning of **289**, **343**, **398**
Possession of 101, **398–9**
Receiving.. .. .. 104, 118, **285**, **343**, *537*, *551*
Restitution of **343**, *486*
Stoppages in respect of **286**, **344**
Value of articles to be stated in charge **286**
Stoppages. (*See* **Pay, Regimental Necessaries, &c.**)
Stores, &c.
Corrupt dealings in respect of.. .. .. **288**
Court of Inquiry on loss of **284**
Equipment (*q.v.*)
Money granted for expenditure on 159
Obliterating marks on 105, 111
Purchasing from soldiers, penalty **343**, **398–400**
Regimental necessaries and goods (*q.v.*)
Signing document in blank **290**
Striking.
Custodian **277**, *536*, *547*
Intention, as element in offence of **321**

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Striking—*contd.*
Sentinel **270**, **297**, *534*, *545*
Soldier **297**
Subordinate on duty 134
Superior officer 22, **274–5**, *536*, *546*
Subpœna duces tecum, writ of 64
Suicide, attempting to commit 90, 99–100, **298**, *542*, *555*
Summary Conviction, meaning of, in Army Act **442**
Summary Jurisdiction Acts. (*See also* **Court of Summary Jurisdiction.**)
Meaning of **440**
Proceedings under **407**
Summary Proceedings. (*See* **Court of Summary Jurisdiction.**)
Summary Punishment. (*See* **Punishments.**)
Summing-up.
Accused, by, of his case 45
Judge Advocate, by 45–6, *480*, *498*, *510*, *514*, *572*
Prosecutor, by 45, *478–9*
Record of, in proceedings **510**
Summons, form of, to civil witness *580*
Sunday.
Exclusion in reckoning time **308**, *453*, *528*
Inclusion in reckoning time **308**, *528*
Sitting of courts-martial on *497*
Superior Authority.
Reference to, by C.O. investigating charge 30, 31, 39, *454–5*
„ „ confirming officer **323**, *486*, *512*
„ „ convening officer 40, *462*, *516*, *517*
„ „ where confirmation withheld *53*
Reports and applications to, how to be made *528*
Superior Court, definition of **440**
Superior Officer. (*See* **Officer.**)
Supplies.
Assisting enemy with **268**, **269**, *534*
Corrupt dealings in respect of **288**, *538*
Injuring persons bringing **270**, **272**, *535*, *544*
Irregular detention of **270**, **272**, *535*
Supreme Court, definition of **440**
Surrender.
How far evidence of intention to return 19
Of post, &c. **267–8**, *534*
Suspension of Arms. (*See* **Armistice.**)
Sutlers. (*See* **Camp Followers.**)
Swear, meaning of expression **440**, **442**
Sword, &c., removed when officer put in arrest 25

T.

Target, volunteers injuring 662
Telegraphists, transfer to reserve immediately on enlistment 630–1
Telegraphs, Telephones, &c., injury to 107, 115
Territorial Forces Act, 1907 688–711
Territorial Regiments.
Origin of titles of .. .. 155 (*d*)
Permanent staff of volunteers belong to 207
Theft. (*See* **Stealing.**)
Thegns 147

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Threatening.
Offences and punishments for 99, 103, 107, 110, 113, 118
Superior Officer 22, 51, **274-5**, *536*, *546*
To induce confession 74
Threatening Language. (*See* **Language.**)
Time, reckoning of **308**, *456*, *528*
Tolls.
Boats and barges, when exempt from.. .. .. 182, **370**, **392**
Exemptions of officers and soldiers from 182, 209, **370**, **391-2**, 628, 662-3
Ferries in Scotland, half-rates for 182, **392**
Offences by collectors **370**
Tower, Constable of, included in Lieutenant of County .. 652
Tower Hamlets Militia .. .. .. 164 (*e*), 204 (*g*), 647
Trade, restrictions as to engagement in 210
Trained Bands. (*See* **Militia.**)
„ „ Commissions of musters and .. 151-2, 162 (*c*)
„ „ London .. .. 163 (*d*)
Traitorous Words, use of, penalty **297**, *542*
Tramways, precedence for military purposes over .. 183, 618, 620
Transfer.
Compulsory 186, 187, **349-351**
Conditions of enlistment, change of, on 187, **349**, **350**
Consent, by 186, **349**, **350**
Meaning of term as applied to soldier **348**
Punishment for offence 186-7, 195, **305**, **350-1**
Reserve (*q.v.*).
Royal Marines, to and from 200, **424-5**
Treacherous communications **268**, *534*
Treachery on active service **268**, **270**, **272**, *534*
Treason.
Consequences following conviction 87
Court-Martial, trial by.. .. .. 23, 53, 85, **299**, **300**, *542*
Evidence, on charge of 62
Offences and punishment 108, 118
Witnesses requisite 67
Treason Felony 85, 108, 118, **299**, **300**, *542*
Trespass, deliberate, may amount to malicious injury .. 107
Trial.
Absence of accused, cannot proceed in *492*
Adjournment of. (*See* **Courts-Martial.**)
After ceasing to be subject to military law **353**, **401**
Awaiting, forms of commitment and discharge of persons.. *596-7*
Begins when court sworn in 43, *464*
Change of place of, not to prejudice accused 40
Continuity of *497-8*
Custody of accused at 42
Delay in **287**, **307-8**, *453*
Dispensed with, on confession.. .. .. **341-2**, **386**, **388**
Duty of J.A.G. President, prosecutor at (*see* under those headings).
Insane persons. (*See* **Lunacy.**)
Joint, evidence against fellow accused .. 40, 76, *462*, *494*, *504*
„ „ and address *494*
„ of several persons, for one offence 40, 43, *461-2*, *494*, *500*, *517*
New, for same offence illegal 33, 35, **309**, **311**, **400**, **403**, **404**, *475*
„ when charge altered or added to *473*, *482*

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Trial—*contd.*
New, when court dissolved before finding **320**, *498*
„ „ „ illegally constituted **400**
„ „ finding not confirmed 36, **400**, *474*, *491*
„ „ proceedings lost *513*, *520*
„ „ special plea to jurisdiction allowed *473–4*
Nullity of, effect of *491*
Officer (*q.v.*)
On any charge, where more than one *495*, *496*
Order on separate charge sheets *494*, *496*
Place of, not to affect punishment **402**
Procedure before commencement of 41–43, *466*, *472*
Remand for, procedure 31, 39, *456*
Removal for 40
Reserve forces, of 35, **415**, 622, 625, 628–9
Rules as to **306–325**, *453–521*
Second, for same offence, illegal 33, 35, 44, **309**, **311**, **400**, **403**, **404**, *455*, *475*
Separate, accused's right to 43, 76, *462*, *495*, *496*, *500*, *517*
Suspension of *498*
Time for *497*
„ limit for commencement of 35, 36, 39, **401**, **402**, **422**, *475*
Violence of accused during *504*
Trinoda necessitas .. .. 146 (*b*)
Trophy Tax in City of London .. .. .. 171 (*f*), 648
Truce. (*See* **Flag.**)

U.

Unit, definitions of term 194–5
United Kingdom.
Committing, discharging, and removing authority for .. **328**, **335**
Execution of sentences passed in **327**, **328**, **333**, **335**
Removal to, of persons sentenced elsewhere .. 53, 54, **327**, **330**, **331**, **334**, **381–2**
Unlawful assembly. (*See* **Riot.**)

V.

Venereal Disease, concealing, aggravating, &c. **278**, **285**
Venue, law relating to .. .. 132 (*c*)
Verdict. (*See* **Finding.**)
Victoria Cross. court cannot forfeit *485*
Victualling House, meaning of **363**
Victualling Houses. (*See* **Billeting.**)
View of place 55, **320**, *497*, *519*
Volunteer Act of 1863.. 654–665
Volunteer Act of 1869.. 666–7
Volunteer Act of 1895.. 668
Volunteer Act of 1897.. 668
Volunteer Act of 1900 669
Volunteers.
Acts relating to 175, 654–669
Administrative regiments 206, 656, 664, 667
Arms, delivery up, &c., of 655, 659–661, 666
Army, connection with 193, 200, **438–9**
„ discharge on enlisting in 655

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Volunteers—*contd.*

Arrest 207, **308**, 660
Attestation, false answer on 640
Billeting of .. .. .. 180 (*b*), **362**, **363**, **429**, **430**
Butts or targets belonging to, wilfully injuring 662
Channel Islands deemed colonies **434**
Charge sheet, framing of *458*, *459*, *532*, *533*
Cinque Ports, in, provisions as to 665
Clothing and equipment, return of, on quitting corps 655, 659, 661, 666
Coast defence, calling out for 206, 669
Command over, regulations as to 207, **341**
Commanding officer, appearance of, in court, by adjutant .. 667
,, ,, property vested in 206, 669
Commissions in 170, 207, 617-8
Corps, appointment to 206, 667
,, consolidation of 206, 667-8
,, formation of 654
,, meaning of 206
Court-martial on, adjutant qualified to sit on *466*
,, court to include, if practicable, Volunteer officer 37, 207, **317**, **422**, *466*
Court of Inquiry 657, 658
Death or disablement on actual military service 659
Definitions of terms in Volunteer Act, 1863.. 664
Desertion.. 658
Disbandment of corps 206, 656
Discharge of 207, 635, 659
Discipline, provisions as to 659, 660
Dismissal, punishment by **416**, **430**
Efficiency, regulations for securing .. .. 206, 660 (*a*), 668-9
,, requisites for, to be declared by Order-in-Council 656
Enlistment, fraudulent 640
Enrolment 206, 655, 665, 667
Expenses 206, 661, 663
False answer by 640
,, certificates, penalty for giving 662
Fencibles 175
Fines 206, 661, 669
History of 151, 155, 165, 166, 175-7, 205-7
Honourable Artillery Company (*q.v.*)
Impressment of carriages .. .. 182 (*a*), **429**
Inspection, annual 656
Ireland, no Volunteers in 207, 665
Isle of Man **435**, 662, 663-4, 665
Isle of Wight 665
Lieutenants of counties, powers with respect to .. 654, 657-661
London, Lieutenancy of 664
Military custody **368**
Military law, application of, to 207, **416**, **420**, **421**
Militia, discharge on joining 655
,, service, exempted from 175, 662, 665
Numbers of, unlimited 206
Oath on enrolment 655, 665
Offences by, when subject to military law **416-7**, **430**
,, ,, ,, ,, ,, may be tried afterwards **422**
Officers, acceptance of commission as, not to vacate seat in Parliament 175, **430**, 655
,, commission and rank of 207, 654

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Volunteers—*contd.*
Officers, military law, application of, to **414**, **417**, **418**
„ when qualified to sit on courts-martial **422**, *466*
Organisation, provisions as to 654-8
Permanent staff .. 207, **415**, **417**, **419**, **420**, **429**, 654, 656-7, 664
Property of corps, provisions as to 206, 660-2, 666, 667-8
„ „ selling or buying wrongfully 661, 666
Quitting, provisions as to 655
Regulations, Secretary of State's powers to make .. 206, 657-8
Reservists, training of, with 631
Rules of corps, provisions as to 206, 660-2, 668-9
Scotland 662, 663-4
Service, acceptance through lieutenant of county 654
„ actual military, allowances during 658-9
„ „ „ calling out for .. 206, 658, 668, 669
„ „ „ death or disablement on, provisions for.. 659
„ „ „ release from 659
„ „ „ special agreement as to 206, 669
Storehouses 661
Subscriptions, fines, &c., recovery of .. 655, 659, 660, 661, 663-4, 669
Summary proceedings against 661, 663-4, 669
Theft by, when to be dealt with by civil court .. .. 20 (*a*)
Tolls, exemptions from .. .. 209 (*f*), 662-3
Training with Regular Forces 207, **416**, **420**, **421**
Votes.
Casting, of president of court **320**, *499*, *519*
Equality on finding and sentence **320**, **321**, *500*, *518*
Voting at Parliamentary Elections.
Right of militiamen **430**
„ officers and soldiers 210

W.

War.
Commanding officer's powers in 2
Correspondents. (*See* **Newspaper Correspondents.**)
Retention in Army service of men about to be discharged 185, **352-4**
Troops *en route* for seat of **435**, **436**
War Office.
History of 161-2
Warrant Officers.
Courts-martial on .. .. 35, 37 (*g*), **430-1**
India, power of Governor-General **428**
Man, included in term in Reserve Forces Act 629
Military law, application of, to.. .. .. **414**, **415**
N.C.O., not included in term **437**
Officer, when included in term.. .. .. **313**, **414**, **431**, **437**
Punishments which may be awarded to **431**
Reduction in rank 35, **305**, **428**, **431**
Re-engagement and extension of service 185
Soldier, when included in term **431**, **437**
Summary punishment, not subject to.. .. .. 29, **310**, **431**
Transfer to another corps **350**, **351**
Warrants.
Admiralty powers of, to issue **422**, **423**, **424**, **426**
Courts-martial, for convening and confirming .. 38, 52, **374-5**
„ forms for *599-604*

[*References to the A.A. are in thick type, those to the R.P. in italics.*

Warrants—*contd.*
Informality or error in 127, **411**
Provisions as to **410-1**
Royal, admissible as evidence **405**
„ courts-martial, Admiralty powers **422, 423, 426**
„ defining meaning of Corps **438, 441**
„ making regulations under Regimental Debts Act 672-3, 677-685
Search **399**
Signing of **411**
Watchword, making known **270, 271, 272**, *535*
Waterford, Lieutenant and Deputy-Lieutenant for, appointment of 648
Weapons. (*See* **Arms.**)
West African Regiment, constitution of 193
West India Regiment, constitution of 193
White Flag, displaying in presence of enemy, charge for .. **299**
Widows and children of men dying on service, grants from Patriotic Fund 687
Wife.
Communications between accused and, privileged 79, *504*
Evidence of 29 (*g*) (*i*), 30 (*e*), 76, 79, 97, **399, 400**, *453, 454, 455, 469, 474, 479, 480, 494, 501, 503-4, 508, 518*
„ Judge Advocate may comment on omission .. *480*
„ prosecutor may not comment on omission .. *479, 493-4*
Maintenance of, liability of soldier for 208, **394-5**
„ „ pay, stoppage from, for **387, 389, 394**
Of lunatic soldier, provisions as to, on discharge .. 190, **355-6**
Questions to accused, criminating his wife 78
Rape on, husband cannot commit .. .. 95 (*b*)
Witness, as. (*See* Evidence, above.)
Will.
Nuncupative 209
Officers and soldiers, of, on military service 209
„ „ „ probate of 209
Original, deposit and inspection of probate of 674, 681
Probate included in "representation" 676
Windows, breaking, soldier may be ordered to pay damages **388**
Witness.
Abroad, attendance not compulsory **378**, *503*
Absence of, adjournment of court, or investigation .. *453, 461, 503*
„ when subject to military law **291**, *540*
Accusation, false, against 50, *493, 494*
Accused, as 45, 75-6, 78, *453, 454, 501, 503-4*
„ inability of, to examine *492, 514*
„ refusal to answer questions *504*
„ right to call 44, 45, 47, *453, 461, 476-9*
„ „ communicate with 41, *460, 515*
„ when entitled to information as to.. .. .. *515*
„ „ not entitled to, nor bound to give, list of .. 40-41, *502*
„ wife of, as 29 (*g*) (*i*), 30 (*e*), 76, 78, 97, **399, 400**, *453, 454, 455, 469, 474, 479, 480, 494, 501, 503-4, 508, 518*
Arrest on civil process, privilege from, of **377**, *503*
Attendance of, cost of *502, 503*
„ officer responsible for *502, 503*
„ procedure for securing 40, *461, 502, 503*
Attesting, when required to be called.. 63
Character, as to .. 44, 45, 59 (*d*), 60, 72, *477, 478, 479, 484, 506*
Child .. .. 77 (*a*), 96

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Witness—*contd.*

Civilian, attendance of, as **377**, *502–3*
„ cannot be compelled to attend court of inquiry .. *522*
„ contempt of court by **292, 378**, *492*
„ form of summons to *580*
„ misconduct of **377**
„ perjury by **378**
Compellable, accused and wife, not 76, *505*
Competency and credibility of, distinction between 77
„ rules as to.. 75-7
Convict, military, removal to appear as **329, 330**
Court of inquiry (*q.v.*).
Court-martial, member of, competent witness for defence only 37, 77, **317**, *465, 483, 502*
„ power to call 47, *481, 502, 506*
Credibility of, questions affecting 75, 83, *509*
Credit of, impeaching 84
Cross-examination of 29, 30, 45, 82–4, *453, 454, 477, 483, 485, 492, 502, 506, 508, 509, 518*
„ of accused *478, 503–4*
„ of accused as to character 78, *462, 484, 485, 494, 504*
Deaf and dumb person not incompetent as 77
Document, refusal to produce **292, 377**, *505, 540*
Evidence, discretion of court as to enforcement of rules of.. 84, *509*
„ dissuading from giving 108
„ explanation of, by 47
Examination by counsel, rules as to 46, *508–9*
„ in-chief 81–2
„ rules as to.. .. .. ..29, 45, 46, 47, 80–4, *506*
Expenses of 47, *502, 503*
Facts of the case, to, meaning of *479*
Field general court-martial, at.. .. .. *518*
Governor of, or G.O.C. in a colony as.. .. .. .. *503*
Hostile, treatment of 82
Husband or wife as, where military property purchased from soldier **399, 400**
Incompetency as, instances of 77
India, proceedings against in **427**
Interpreter (*q.v.*).
Judge advocate competent, for defence only **317**, *502, 513*
„ „ may call *514*
Material, absence of, may invalidate proceedings .. *461, 502, 503*
Mental disease, how far renders incompetent 77
Notice of intention to call, when to be given.. .. .. *502*
Number requisite in certain cases 67, 76, 106
Oath (*q.v.*)
Perjury (*q.v.*).
Presence while not under examination 47, *504–5*
Previous statements, cross-examination as to 83-4
Prisoner, or soldier undergoing detention, removal of, to appear as **333**, *502–4*
Privilege of accused as 78-9
„ as to criminating answers does not extend to civil liability 79
„ as to information as to commission of offences.. 79
„ communications during marriage 79, *504*
„ confidential reports, &c., as to 79

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Witness—*contd.*
Privilege of court of inquiry proceedings 79, 138, *522*
„ criminal acts, does not extend to 79
„ none in case of doctors and clergymen .. 80
„ on considerations of public policy 79
„ professional communications 79
„ rules as to 77-80, 83, 140, **379**, *501*
„ waiver of, when allowed 79
Prosecutor, called by 45, 47, *477*, *501*, *502*, *506*
„ competent as, for defence only **317**, *502*
Questions to, by accused *505*, *506*
„ by court *506*
„ „ of inquiry *521*, *523*
„ by judge advocate 47, *505*, *506*, *514*
„ by prosecutor 47, *505*, *506*
„ by whom put 47
„ discrediting 83, 84, *509*
„ entered on proceedings whether answered or not 80
„ examples of fair and unfair 81, 82
„ irrelevant, allowed in cross-examination .. 82-3
„ leading, rules as to 81-2
„ mode of putting *505*
„ objection to 47, *501*, *508-9*, *510*
„ refusal to answer 83 (*a*), **292**, **377**, *504*, *505*, *508*, *510*, *540*
„ to test veracity 83
Recalling of 47, *484*, *500*, *506*
Re-examination of 45, 83, 84, *506*
Refreshing memory 73, 82
Religious belief of, immaterial.. 77
Rule as to directing attention of, to particular persons, &c. 82
Soldier not exempt from appearing as, before civil court .. **393**
Solemn declaration. (*See* **Declaration.**)
Summary of evidence. (*See* **Evidence.**)
Sworn, must be 47, *505*
Verbal request for production of documents not obligatory on *503*
Wife, as (*q.v.*).
Withdrawal of, when not under examination 47, *504-5*
Woman, offences against.. .. .. .. 70, 95-7, 109, 110, 116
Writing, reports to be made in.. .. .. *528*
Writings as Evidence.. 62

Y.

Year, meaning of, in Army Act.. .. .. **442**
Yeomanry.
Billeting of .. .. .. 180 (*b*), **362**, **363**, **429**, **430**
Bounty certificate, taking as security.. .. .. .. **400**
Calling out of 205, **416**
Cavalry, not included in regular 201
Channel Islands deemed colonies **434**
Charge sheet, framing of, when accused in .. *458*, *459*, *532*, *533*, *537*
Civil power, may serve in aid of 205, **420**
Command over **341**
Commissions in 170, 617-8

[*References to the A.A. are in thick type, those to the R.P. in italics.*]

Yeomanry—*continued.*
Court-martial for trial of member of, yeomanry officer if possible to be member of 37, 207, **317**, **422**, *466*
Enlistment, fraudulent, by member of 204, **280-1**
,, in regulars, deduction from pay in case of .. **386-7**
Expenses of, Government allowances towards 205
False answer on attestation **281**, 640
History of 175-7, 204-5
Impressment of carriages for .. .. 182 (*a*), **429**
Ireland, in 176, 177
Juries, exemption from service on, of officers of 209
Jurisdiction, &c., over, re-vested in Crown 617, 619
Military law, application of, to 176, 205, **414**, **416**, **417**, **419**, **421**
Militia Acts, application of, to.. .. .. .. 176, 633 (*a*) 653
,, and, points of difference between 204-5
Modification of Army Act with respect to **429**
Numbers of, no restriction as to 177, 205
Officers, rank of 205
Overseer, exemption from serving as 210
Parish officer, exemption from serving as **430**
Parliament, seat in, not vacated by accepting commission in **430**
Permanent staff of **415**, **417**, **419**, **429**
Regimental rules, power to make 205
Reserve divisions, provisions as to 653-4
Tolls, exemptions from .. .. 209 (*f*)
Training—
Absence from .. .. 642 (*a*)
Annual, liability to and period of .. .. 205, **416**, 637 (*b*), 653
Liability for further, for desertion, absence without leave, or fraudulent enlistment .. .. 641 (*b*)
Preliminary, provisions as to, do not apply to .. 637 (*a*), 653
Yorkshire, Ridings deemed separate counties for purposes of Militia Act 647

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